

**CAPITAL MANAGEMENT COMMITTEE
AGENDA**

DATE: April 1, 2021

DAY: Thursday

TIME: 3:30 pm

PLACE: CONFERENCE ROOM LINDBERGH - ORLANDO INTERNATIONAL AIRPORT

For individuals who conduct lobbying activities with Aviation Authority employees or Board members, registration with the Aviation Authority is required each year prior to conducting any lobbying activities. A statement of expenditures incurred in connection with those lobbying instances should also be filed prior to April 1 of each year for the preceding year. Lobbying any Aviation Authority Staff who are members of any committee responsible for ranking Proposals, Letters of Interest, Statements of Qualifications or Bids and thereafter forwarding those recommendations to the Board and/or Board Members is prohibited from the time that a Request for Proposals, Request for Letters of Interests, Request for Qualifications or Request for Bids is released to the time that the Board makes an award. The lobbyist shall file a Notice of Lobbying (Form 4) detailing each instance of lobbying to the Aviation Authority within 7 calendar days of such lobbying. Lobbyists will also provide a notice to the Aviation Authority when meeting with the Mayor of the City of Orlando or the Mayor of Orange County at their offices. The policy, forms, and instructions are available on the Aviation Authority's offices web site. Please contact the Chief Administrative Officer with questions at (407) 825-7105.

I. CALL TO ORDER

II. ROLL CALL

III. CONSIDERATION OF CAPITAL MANAGEMENT COMMITTEE MINUTES FOR MARCH 18, 2021

IV. ITEM(S) FOR CONSIDERATION

- A. Recommendation to Accept Revisions to Dispute Review Board (DRB) Specifications to be Implemented on Aviation Authority Construction Projects

DRAFT

On **THURSDAY, MARCH 18, 2021**, the **CAPITAL MANAGEMENT COMMITTEE** of the Greater Orlando Aviation Authority met in Conference Room Lindbergh of the Greater Aviation Authority offices in the main terminal building at the Orlando International Airport (MCO), One Jeff Fuqua Boulevard, Orlando, Florida. Chairman Phillip N. Brown called the meeting to order at 10:30 a.m. The meeting was posted in accordance with Florida Statutes and a quorum was present in the room.

Committee members present, Phillip N. Brown, Chairman
 Thomas Draper, Senior Director of Operations
 Davin Ruohomaki, Senior Director of Construction and
 Engineering

Also present, Kathleen Sharman, Chief Financial Officer
 Alejandro Sorondo, HNTB
 Karen Ryan, Legal Counsel, Nelson Mullins
 Larissa Bou, Recording Secretary

For individuals who conduct lobbying activities with Aviation Authority employees or Board members, registration with the Aviation Authority is required each year prior to conducting any lobbying activities. A statement of expenditures incurred in connection with those lobbying instances should also be filed prior to April 1 of each year for the preceding year. As of January 16, 2013, lobbying any Aviation Authority Staff who are members of any committee responsible for ranking Proposals, Letters of Interest, Statements of Qualifications or Bids and thereafter forwarding those recommendations to the Board and/or Board Members is prohibited from the time that a Request for Proposals, Request for Letters of Interests, Request for Qualifications or Request for Bids is released to the time that the Board makes an award. As adopted by the Board on September 19, 2012, lobbyists are now required to sign-in at the Aviation Authority offices prior to any meetings with Staff or Board members. In the event a lobbyist meets with or otherwise communicates with Staff or a Board member at a location other than the Aviation Authority offices, the lobbyist shall file a Notice of Lobbying (Form 4) detailing each instance of lobbying to the Aviation Authority within 7 calendar days of such lobbying. As of January 16, 2013, Lobbyists will also provide a notice to the Aviation Authority when meeting with the Mayor of the City of Orlando or the Mayor of Orange County at their offices. The policy, forms, and instructions are available in the Aviation Authority's offices and the web site. Please contact the Chief Administrative Officer with questions at (407) 825-7105.

MINUTES

1. The Committee was in consensus to approve the meeting minutes of January 28, 2021, as written.

RECOMMENDATION TO APPROVE THE DELIVERY METHOD FOR FURNISHING AND INSTALLATION OF OVERHEAD ROADWAY WAYFINDING SIGNS, PHASE 2 OF THE OVERHEAD ROADWAY SIGNAGE PLAN FOR THE SOUTH TERMINAL COMPLEX (STC)

2. Mr. Sorondo presented the item.

The Greater Orlando Aviation Authority (Aviation Authority) Master Roadway Signage Program has been established to improve wayfinding around the Orlando International Airport (MCO) campus. Contained within the Aviation Authority Master Roadway Signage Program, which is included within the Aviation Authority Capital Improvement Program (CIP) at 50% Florida Department of Transportation (FDOT) / 50% General Airport Revenue Bonds (GARB) funding, are roadway signs associated with and necessary for wayfinding to the STC.

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To ensure the required signs are installed prior to the opening of the STC, the STC Overhead Roadway Signage program has been divided into two phases; Phase 1 has been procured under BP-S00192 - GMP 5S.7 South Terminal C Phase 1 Landside Overhead Roadway Signage and Phase 2 is proposed to be competitively procured by the Aviation Authority in accordance with its procurement policies and Florida Department of Transportation (FDOT) funding requirements.

The estimated cost of the Phase 2 portion of the signage program is approximately \$4 million. Design for these signs would need to start in late summer of 2021, to support a final installation window of late 2021/early 2022.

To allow the STC Design Team and Construction Management at Risk (CMAR) Team to concentrate on their primary objective of timely completion of the South Terminal Complex, it is recommended that Phase 2 of the Roadway Signage Program be procured using contractors outside of the CMAR team. The delivery method used for Phase 2 of the Roadway Signage Program must support the timelines of designing and installing the signs in a reasonable amount of time to the Phase 1 installation.

The Planning Department and Engineering & Construction Department propose to use the Design/Build (D/B) delivery method for this Project. The design concept has been completed with the types and locations of signs mostly determined. The roadway signage design must follow the standard FDOT Roadway Signage design criteria and it is typical for signage contractors to complete the remainder of the design details as delegated engineering shop drawings. The D/B delivery method will also result in a faster construction schedule, as it will avoid the time that would be required for separate design, bidding and construction phases.

The selection of the D/B contractor would follow Florida Statutes Section 287.055, the Consultants Competitive Negotiations Act (CCNA) and the Aviation Authority's standard policies for the procurement of D/B contracts. The Advertisement and Submission Requirements will be prepared by Aviation Authority's staff supported by Aviation Authority's General Consultant serving as the Design Criteria Consultant (DCC). The Aviation Authority's Professional Services Committee (PSC) will evaluate the Statement of Qualifications (SOQ) based upon criteria allowed by the CCNA and Aviation Authority policy, which includes preferred past experience with the Aviation Authority and/or past experience with municipalities or private overhead roadway signage facilities. Past experience of similar work at MCO will be highly preferred but not mandatory. The PSC will shortlist the proposers based upon the published selection criteria. Upon Aviation Authority Board approval of the shortlisted selection, the Aviation Authority will solicit bids from the shortlisted firms and will enter into a contract with the lowest bidder. The Aviation Authority has, for reference, the Phase 1 pricing, which was recently competitively procured in February 2021, as another good indicator of competitive market pricing.

It is not recommended that a Dispute Review Board be appointed for this Project.

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The CMC may select another delivery method, such as design-bid-build, which would require the procurement of a design consultant in accordance with the CCNA and a separate procurement for the contractor after the design has been completed.

The CMC may also select another procurement method, such as the D/B competitive proposal method whereby price proposals would be submitted and considered as part of the selection criteria.

The estimated cost of the Phase 2 portion of the Roadway Signage Program is approximately \$4 million and it is included in the current Capital Improvement Plan.

It was respectfully requested that the Capital Management Committee reach a consensus to accept staff's recommendation to use the Design/Build delivery method for Phase 2 of the Roadway Signage Program and procure the contract following the CCNA's qualifications-based selection method.

Mr. Ruohomaki provided further information regarding the location of the signage. Mr. Sorondo added that this is the signage included in Phase 2 and Phase 2A.

Chairman Brown asked if the signage is for both North and South Jeff Fuqua Boulevard. Ms. Sorondo responded that Phase 2 includes signage for both the North and South. Chairman Brown followed up by asking if these signs are static. Mr. Sorondo responded in the affirmative.

By question from Chairman Brown regarding this item being part of the Capital Improvement Plan (CIP), Ms. Sharman responded that the way this is presented in the CIP is 50% FDOT and 50% GARB, considering that it qualifies for FDOT money. Ms. Ryan confirmed that staff will follow CCNA and FDOT rules. Mr. Brown clarified that the Design/Build delivery method is permitted by FDOT, but has to go through CCNA process.

Continuing, Chairman Brown asked if the grant application process had been initiated. Ms. Sharman answered in the affirmative. Mr. Sorondo confirmed that he communicated with FDOT.

Discussion ensued regarding the information that should be included in the request for funds, and next steps to take in the application process.

Chairman Brown asked if there were any further comments or questions. Hearing none, the Committee was in consensus of the recommendation.

ADJOURNMENT

3. There being no further business to be considered, Chairman Brown adjourned the meeting at 10:38 a.m. *(Digitally signed on March 18, 2021)*

Larissa Bou
Recording Secretary

Phillip N. Brown
Chairman
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GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Jeff Fuqua Boulevard
Orlando, Florida 32827-4399

MEMORANDUM

TO: Members of the Capital Management Committee

FROM: Edward R. Philpot, Nelson Mullins Broad and Cassel

DATE: April 1, 2021

ITEM DESCRIPTION

Recommendation to Accept Revision to Dispute Review Board (DRB) Specifications to be Implemented on Aviation Authority Construction Projects

BACKGROUND

The Aviation Authority includes a DRB process in specifications on construction projects of critical concern. This process is designed to assist the Aviation Authority and contractors to resolve disputes at the project level before resorting to litigation. In 2016, the Aviation Authority's DRB specifications were reviewed and revised by this Committee to update them and incorporate language to conform to best practices.

At the request of Construction staff, the DRB specifications have been reviewed to incorporate additional comments and revisions gathered since the last major revision. The attached document (attached as a clean document as Exhibit A and as a redline as Exhibit B) shows the proposed redline modifications to the DRB specifications.

ISSUES

The attached revised specification provides recommended updates to the Aviation Authority's DRB specification to formally incorporate the Committee's 2016 changes, along with improvements generated from comments by Construction staff and legal counsel. These revisions include, among other things, the following:

- Streamlining the DRB process to clarify the participants and the parties who may raise disputes. The previously-approved DRB specification contemplated roles for other project participants in the DRB process (to make the DRB process compatible for "super DRBs" as are used on extremely large complex projects). The more traditional DRB approach is focused on the Owner-Contractor relationship, and the proposed revisions bring the DRB specification in line with that.
- Clarifying the qualification and conflict rules for DRB members, along with revisions to the selection and replacement process. Among other improvements, the previously-approved DRB specification did not contemplate DRB members serving on multiple DRB panels for the Aviation Authority, and that is now addressed in the proposed revision. The proposed revision also expands removal and replacement of DRB members.
- Simplifying and clarifying the procedures for regular DRB meetings and DRB hearings (this includes consolidating separate specification sections dealing with these matters).
- Updating statutory public records language.
- Making terminology uniform throughout the specification, along with other formatting revisions.

The revisions are more particularly set out in the attached redline.

ALTERNATIVES

There exist at least two alternatives: (1) maintain the DRB process in its current form; or (2) maintain the DRB specification in a modified form, taking into account the recommended revisions in this document.

FISCAL IMPACT

The fiscal impact is undetermined at this time, as it will depend on project-specific details (such as the number of disputed claims and issues), which is difficult to estimate in the abstract. Revising the DRB specifications or Aviation Authority policy should not increase costs to implement or carry out the DRB process.

RECOMMENDED ACTION

It is respectfully recommended that the Committee consider the attached revisions to the DRB specification and reach consensus to authorize their use in substance - subject to revisions in form and to address statutory requirements (revisions to statutory public records disclosures) - on appropriate projects moving forward.

THIS SECTION ONLY TO BE UTILIZED WITH CONCURRENCE OF THE DIRECTOR OF CONSTRUCTION.

SECTION 00 73 83.13 - DISPUTE REVIEW BOARD

1.0 OVERVIEW

1.1 A Dispute Review Board (DRB) will be established for this Project to assist in the resolution of disputes arising out of the Work. This Section 00 73 83.13 describes the purpose, procedure, function and features of the DRB.

1.2 The role of the DRB is to issue independent advisory opinions by skilled construction professionals knowledgeable about the Work that evaluate claims and disputes with the purpose of facilitating negotiated resolutions by the Contracting Parties themselves.

1.3 The DRB will provide special expertise to assist and facilitate the timely and equitable resolution of disputes and controversies between the Owner and the Contractor (“Contracting Parties”). The DRB is not intended as a substitute for the Contracting Parties to proceed in good faith to cooperate with each other and to resolve fairly and expeditiously disputes that arise during the performance of the Work. The Contracting Parties are to make every reasonable effort to resolve disputes before submitting them to the DRB.

1.4 The DRB will be used when the procedure for resolving disputes, as set forth in the Contract Documents and this Section 00 73 83.13, is unsuccessful. The submission to the DRB of any unresolved dispute is a condition precedent to litigation or arbitration of the unresolved dispute. The term of the DRB shall commence at the issuance of the Notice to Proceed or after the three (3) DRB members have been selected in accordance with Section 2.0, whichever is later, and shall continue until Final Payment.

1.5 The DRB will fairly and impartially consider the disputes referred to it and will provide written advisory opinions to assist in the resolution of the disputes by the Contracting Parties. The advisory opinions of the DRB will not be binding on any of the Contracting Parties and will not be admissible in any subsequent legal proceeding or arbitration.

1.6 During the dispute resolution process, the Contractor will continue with the Work in accordance with the Contract Documents in a diligent manner and without delay. With respect to the Work that is the subject of a dispute, the Contractor will keep complete records of extra costs and time incurred in accordance with the Force Account provisions of the Contract Documents. In accordance with the Contract Documents, the Contractor will permit the Owner, its designated representatives and the DRB access to any records needed for evaluating the dispute, without any claim of privilege or confidentiality. Such access will be provided after reasonable notice. The actual, reasonable costs of printing or copying records will be paid by the party requesting the copies; the cost of collecting or reviewing the records prior to production shall be paid by the producing Contracting Party.

1.7 An agreement will be entered into between the Owner, Contractor and DRB members that incorporates the terms and procedures set forth in this Section 00 73 83.13. A copy of this agreement, titled Three Party Agreement, is located in Section 00 73 83.19.

2.0 DRB MEMBERSHIP

2.1 The DRB will consist of three members. One member shall be selected by the Owner and approved by the Contractor, and one member shall be selected by the Contractor and approved by the Owner. The

first two members shall select and agree on the third member. Normally, the third member will at all times serve as Chair for all DRB activities. If the third member of the DRB declines to act as Chair, then the chairmanship shall be alternated with the Owner's selected member assuming this position at the first resolution meeting.

2.2 The Contracting Parties shall provide notice of their member selection ("Notice of Member Selection") within fourteen (14) calendar days after issuance of the Notice to Proceed; the Contracting Parties shall serve objections, if any, concerning the other Contracting Party's member selection within seven (7) calendar days after the Notice of Member Selection. Any objected-to member selection shall be replaced with a new member selection within seven (7) calendar days after the objection is served; the Contracting Parties shall serve objections, if any, concerning the replacement member selection within seven (7) calendar days after the replacement member selection; this process may be repeated as needed. The two (2) members selected by the Owner and the Contractor that are not objected-to shall, within fourteen (14) calendar days after the last objection period expires, jointly select the third member and provide notice to the Contracting Parties; the Contracting Parties shall serve objections, if any, concerning this member selection within seven (7) calendar days after that notice. Any objected-to member shall be replaced with a new member selection within seven (7) calendar days after the objection is served; the Contracting Parties shall serve objections, if any, concerning the replacement member selection within seven (7) calendar days after the selection of the replacement member; this process may be repeated as needed. If three (3) DRB members, because of an impasse, are not empaneled within ninety (90) calendar days after the issuance of the Notice to Proceed, then the Contracting Parties shall engage, and equally share the cost of, a mediator skilled in construction disputes to assist in empaneling three (3) members, with the goal of accomplishing this as quickly as possible. If already empaneled, all three members shall attend the Pre-Construction Meeting.

2.3 All DRB members shall be experienced with the type of construction methods associated with the Project, in the interpretation of contract documents and in contract dispute resolution. The goal in selecting the third member is to complement the construction experience of the first two members and to provide leadership to the DRB's activities. It is imperative that DRB members show no partiality to either the Contractor or the Owner or have any conflict of interest.

2.4 The criteria and limitations for membership will be as follows:

- A. The members selected will have no direct or indirect ownership or financial interest in the Contractor, the OAR, the Designer (i.e., the Architect or Engineer of the Project), any subcontractor or supplier of the Project or the employer of other DRB members.
- B. Except for services as a DRB member of the Owner's projects, no member shall have been an employee, contractor or consultant to the Contractor or the Owner, the OAR, the Designer, any subcontractor or supplier of the Project within a period of five (5) years prior to the date of the Notice of Intent to Award Contract.
- C. No member shall have had a personal, professional or business relationship with the Owner or the Contractor or either's subcontractors or subconsultants of the Project (or an employee or officer of the Owner or the Contractor) of a nature which could be construed to compromise the ability to impartially issue advisory opinions concerning claims or disputes.
- D. No member shall have had any prior involvement in the Project (other than as a DRB member) of a nature which could be construed to compromise the ability to impartially issue advisory opinions concerning claims or disputes.
- E. No member shall be employed by the Contractor or the Owner, the OAR, the Designer, or any subcontractor or supplier of the Project during the term of the Contract, except as a DRB member pursuant to the Three Party Agreement or as a DRB member on another project.
- F. During the term of the Contract, no discussion or agreement shall be made between a DRB member and Owner or the Contractor regarding employment after the Contract is completed.

- G. During the term of the Contract, ex parte communications between a DRB member and the Owner or the Contractor or either's subcontractors or subconsultants of the project are prohibited concerning the Project or any dispute arising out of the Project, including solicitation of any DRB member's advice or consultation concerning the Project.

2.5 Before appointments are final, the first two prospective members will submit complete disclosure statements to the Contracting Parties. The disclosure statement shall conform to the form attached as an Exhibit to these Specifications. Each disclosure statement will include the prospective member's experience and a declaration describing all past, present and anticipated or planned future relationships to the Project and with the Contracting Parties, the OAR, Consultants or any subcontractor or supplier of the Project. The third DRB member will supply a disclosure similar to the first two DRB members and to the Contracting Parties before the third member appointment is finalized. The Contracting Parties' DRB members will ensure that the third member meets all of the selection criteria listed above. A DRB member must update the disclosure statement if the member discovers circumstances, or if events occur, that would disqualify the DRB member under Section 2.4, above, or that would change a DRB member's responses to the disclosure statement; in any event, each DRB member must update the disclosure statement annually or as requested by the Owner.

2.6 If for any reason a DRB member fails or is unable to serve, or violates any of the criteria in Section 2.4 (e.g., failing to disclose a relationship), the Chair (or failing the action of the Chair, then either of the other members) shall inform the Contracting Parties and such non-serving member shall be replaced in the same manner as the member being replaced was selected. A DRB member may withdraw from the DRB upon not less than four (4) weeks' written notice to the Contracting Parties and to the other DRB members. A DRB member may be removed for or without cause by his or her original appointer or appointers; the Owner may remove the Owner-appointed DRB member, the Contractor may remove the Contractor-appointed member, and the Owner/Contractor-appointed members may jointly agree to remove the third member; this procedure applies except in the case of a conflict of interest, in which case the Contracting Parties may jointly agree to remove the DRB member in question. If the Contracting Parties disagree concerning whether a disclosure or conflict of interest renders a DRB member unable to serve by the criteria in Section 2.4, then the DRB member in question may be removed for cause upon the vote of one (1) of the Contracting Parties and the two (2) other DRB members, bearing in mind that the appearance of bias or impropriety by any DRB member may undermine the DRB process. The replacement DRB member shall be selected in the same manner as required by Section 2.2 above, except that if a removed member is not replaced within forty-five (45) calendar days after removal, and the delay is the result of an impasse, then the Contracting Parties shall engage, and equally share the cost of, a mediator skilled in construction disputes to assist in replacing the removed member. The removed DRB member shall not be entitled to additional compensation under the Three-Party Agreement, unless the Owner determines, in its sole discretion, that equitable circumstances exist to justify payment. Replacement shall be considered completed when a replacement DRB member executes the Three Party Agreement.

3.0 DRB PROCEDURES

3.1 The DRB will formulate procedures of operation that shall be flexible with respect to the functioning of the DRB and consistent with the existing procedures for contract administration. The DRB shall circulate proposed procedures of operation within fourteen (14) calendar days after the first meeting; within seven (7) calendar days of receiving the proposed procedures of operation, the Contracting Parties shall review the proposed procedures of operation and circulate to the DRB and to each other any proposed changes or comments. The DRB may, within its discretion, consider, accept, or discard any of the Contracting Parties' proposed changes and comments, and shall circulate official procedures of operation within twenty-eight (28) calendar days after the first meeting; however, the Contracting Parties may by written agreement determine certain or all procedures of operation. The DRB may, from time to time, revise its procedures of operation within its discretion, whether on the DRB's own initiative, or at the request of any of the

Contracting Parties. To the extent that the procedures of operation adopted by the DRB conflict with the Contract Documents, the Contract Documents prevail.

3.2 Each DRB member shall be provided a complete set of the Contract Documents. The Contracting Parties shall, before each DRB meeting, if requested by the DRB members, provide each member with copies of biweekly or monthly reports already in use on the Project. In consultation with the DRB, the Contracting Parties may also agree to provide other reports, documents or submittals generated in connection with administering the Contract Documents (e.g., requests for change orders, etc.).

3.3 The DRB will visit the Project once a month during the first three months of construction of the Project unless the Owner and Contractor decide otherwise. The Owner and Contractor shall together have the discretion to determine the frequency of meetings thereafter, unless a meeting is required to hear a disputed issue that could not be otherwise resolved by the Contracting Parties. The regularly scheduled meetings will typically be scheduled in connection with the Owner's Job Coordination Meetings (JCMs).

3.4 Each regularly scheduled DRB meeting will consist of an informal discussion of project progress and issues, and a field inspection of the Work. The DRB meetings will be attended by the DRB and representatives from the Owner and the Contractor. The field inspections will cover all active segments of the Work. The DRB will be accompanied by representatives of both the Owner and the Contractor during each field inspection. Soliciting any DRB member's advice or consultation regarding the Work or the Contract is expressly prohibited unless all Contracting Parties are present for such purposes.

3.5 After the first three regularly scheduled meetings, subsequent meetings do not have to take place at the Project site. The location and frequency of subsequent meetings will be agreed upon by the Owner, the Contractor and the DRB depending upon the progress of the Work. Each meeting will consist of an informal round table discussion and, if necessary, a field inspection of the Work. The round table discussions may include presentations from each of the Contracting Parties to the DRB addressing, without limitation, the following items: construction work accomplished since the last meeting, current status of the Work, the current and future schedule, payment status, potential future problems that may come before the DRB, proposed solutions to those problems, and an update regarding previously handled or ongoing problems. The Agenda for regularly scheduled meetings of the DRB will generally include the following:

- A. Meeting opened by the Chair of the DRB.
- B. Description by the Contractor of the work accomplished since the last meeting, current status of the work schedule, anticipated work to be completed prior to the next scheduled DRB meeting, potential problems and proposed solutions.
- C. Discussion by the Owner of work schedule, potential problems and any general observations of issues that might possibly become problems or disputes.
- D. Update by DRB on status of its advisory opinion of the resolution of a pending disputed matter, if applicable.
- E. If there is a new dispute, initial discussion commences with remarks by the Contracting Party raising the dispute, summarizing the issues involved and that Contracting Party's requested resolution. The other Contracting Party will then respond with their positions. The DRB may request additional information from the Parties regarding the dispute.
- F. If there is an ongoing dispute that has not yet been resolved, each Contracting Party shall address information previously requested by the DRB followed by the responses of the other Contracting Party.
- G. If the Contracting Parties have reached an impasse over resolution of the dispute, the DRB shall set the date and time for a DRB Hearing on the dispute, in accordance with Section 4.0 below.
- H. Set a place, date and time for next regularly scheduled DRB meeting.
- I. A site visit may be conducted, at the discretion of the DRB, which shall be accompanied by both Contracting Parties.

3.6 During the regularly scheduled meetings, the DRB shall be provided, by the Owner, with an administrative assistant who shall prepare meeting minutes and circulate them for comments, revisions and/or approval by all concerned.

3.7 The Contracting Parties are strongly encouraged to participate in both regularly scheduled DRB meetings and DRB hearings without the presence of legal counsel, although each Contracting Party is free to consult with, without limitation, legal counsel, consultants, and technical experts before or after the meetings to prepare for or respond to DRB meeting issues. The presence of legal counsel is strongly disfavored and diminishes the efficacy of the DRB process. Legal counsel may not make presentations on behalf of the Contracting Parties, or address the DRB, unless the Contracting Parties involved in the dispute agree otherwise. If a Contracting Party intends to have legal counsel attend a DRB meeting or hearing, that Contracting Party shall notify the other Contracting Party and the DRB of that intention at least three (3) calendar days prior to the meeting or hearing; the other Contracting Parties involved in the dispute may respond promptly concerning whether they will also have legal counsel present.

4.0 RESOLUTION OF DISPUTES

4.1 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 Contracting Parties and the time periods stated below may be shortened in order to hasten resolution or lengthened when the issues are complex.

- A. If the Owner or Contractor objects to any final decision or position by the other regarding any claim or change order request or other action, and all avenues for resolving such objections by direct negotiation have been exhausted, then either Contracting Party may file a written request for hearing to the DRB, stating clearly the specific issue to be addressed by the DRB, the basis for the Contracting Party's objection to the final decision made by the other Contracting Party, and the requested relief sought in the advisory opinion of the DRB.
- B. Upon receipt by the DRB of a written request for hearing, the DRB will first decide when and where to conduct the meeting to hear the dispute. For an urgent matter, the DRB will meet at its earliest convenience.
- C. Prior to each DRB hearing on a disputed issue, each Contracting Party shall submit a Position Paper to the DRB which provides details of the dispute, the issues involved and that Contracting Party's requested resolution. A Contracting Party furnishing written documentation to the DRB shall also furnish copies of such information to the other Contracting Parties involved in the dispute. Initial written documentation will be furnished a minimum of twenty-one (21) calendar days prior to the date the DRB sets the meeting to hear the dispute. A Contracting Party may respond to the Position Papers submitted by the other Contracting Party with a Rebuttal which shall be submitted to the DRB and the other Contracting Party a minimum of ten (10) calendar days prior to the DRB meeting. If the DRB requests additional documentation prior to, during or after the meeting, the appropriate Contracting Party will provide the requested information to the DRB and to the other Contracting Party. All written documentation provided and any written statements by the DRB and the participants shall be and remain settlement negotiations and shall not be admissible in any subsequent legal proceeding or arbitration, except for the limited purpose of demonstrating the performance of a condition precedent, and only to the extent necessary for that purpose; furthermore, each participant and the DRB shall not disseminate the written documentation or statements except to the DRB participants and their representatives or consultants or counsel (and except as may be required by applicable law).
- D. The DRB's initial advisory opinion concerning entitlement must be provided to the Contracting Parties in writing within twenty-eight (28) calendar days after completion of the hearing(s). If the Contracting Parties agree, the DRB may be granted additional time to formulate its advisory opinion concerning entitlement in cases of extreme complexity.

- E. Unless otherwise agreed by the Contracting Parties, the DRB's initial advisory opinion shall address matters of entitlement only, addressing whether, under the Contract Documents, relief is appropriate, and along with the other aspects of entitlement, whether each aspect of any claim or dispute has been timely noticed, substantiated, and, if applicable, certified as required by the Contract Documents.
- F. Within twenty-eight (28) calendar days after receiving the DRB's initial advisory opinion, the Contracting Parties involved in the dispute shall accept or reject the DRB's initial advisory opinion in writing, with notice of the acceptance or rejection to all Contracting Parties and the DRB. The failure of a Contracting Party to respond within this thirty (30) calendar day period will be deemed a rejection by such Contracting Party of the DRB's advisory opinion.
- G. If the DRB determines that there is no entitlement, then the DRB process shall be complete as to the claim or dispute in question and the Contracting Parties involved in the dispute may, in light of the DRB's determination, continue to attempt to negotiate a full resolution of the dispute or otherwise seek recourse as to the claim or dispute in accordance with the Contract.
- H. If the DRB determines that there is entitlement, the Contracting Parties shall carefully consider the DRB's advisory opinion and attempt to negotiate a full resolution of the dispute. If the Contracting Parties cannot agree on an amicable resolution of the dispute within forty-five (45) calendar days after the receipt of the DRB's initial written advisory opinion, then either Contracting Party may request that the DRB issue a final advisory opinion to address the entire dispute in accordance with the Contract, including an advisory opinion proposing equitable adjustment to the Contract and/or an extension or reduction of time, if applicable. The DRB will then schedule an additional hearing to facilitate the rendition of a final advisory opinion.
- I. Prior to each such additional DRB hearing, each Contracting Party shall submit a Position Paper and Rebuttal to the DRB which provides details of the proposed final resolution of the dispute, based on the DRB's initial advisory opinion regarding entitlement, following the procedure and timeline described above in Paragraph C.
- J. The DRB's final advisory opinion must be provided to the Contracting Parties involved in the dispute in writing within twenty-eight (28) calendar days after the completion of each such additional DRB hearing.
- K. Within forty-five (45) calendar days after receiving the DRB's final advisory opinion, the Contracting Parties shall accept or reject the DRB's final advisory opinion in writing, with notice of the acceptance or rejection to the Contracting Parties and the DRB. The failure of a Contracting Party to respond within the forty-five (45) calendar day period will be deemed a rejection by such Contracting Party of the DRB's final advisory opinion.
If the Contracting Parties involved in the dispute are able to resolve the dispute (with or without the aid of the DRB's advisory opinions), then the Owner will promptly process any required Contract Modification.
- L. If the DRB's final advisory opinion is rejected by a Contracting Party, then any Contracting Party may seek recourse in accordance with the Contract.

4.2 The Owner and the Contractor shall have representatives at all dispute resolution hearings. The Contracting Party requesting the DRB hearing will first discuss the dispute, followed by the other Contracting Party. Each Contracting Party will then be allowed successive rebuttals until all aspects are fully covered. The DRB members and the Contracting Parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional meetings may be necessary in order to consider and fully understand all of the information presented by both Contracting Parties. During the meetings, no DRB member will express any opinion concerning the merit of any facet of the dispute.

4.3 After the DRB hearing is concluded, the DRB will meet in private to formulate advisory opinions supported by two (2) or more members. As set forth above, the DRB's advisory opinion must be in writing and provided to both Contracting Parties. The advisory opinion shall be based on the pertinent Contract provisions, the documents submitted and the facts and circumstances involved in the dispute.

4.4 The DRB will make every effort to issue unanimous advisory opinions. If a unanimous advisory opinion is not possible, the dissenting member may, but is not required to, prepare a minority advisory opinion.

4.5 The fact that the DRB considered the dispute, the qualifications of the DRB members, the DRB's advisory opinion, the DRB meetings, whether the Contracting Parties accepted or rejected the DRB's advisory opinion and all information submitted or statements made in connection with the DRB process are settlement negotiations and are not admissible in any subsequent legal proceeding or arbitration, except for the limited purpose of demonstrating the performance of a condition precedent, and only to the extent necessary for that purpose.

4.6 In the absence of a change order or written agreement signed by the Contracting Parties, no advisory opinion of the DRB, whether initial or final or of any other form, is binding on the Contracting Parties in any way, even if all Contracting Parties accept the advisory opinion(s).

4.7 A request for reconsideration or clarification may be submitted to the DRB within fourteen (14) calendar days after the issuance of the advisory opinion but only if either of the following two conditions exist. Reconsideration and clarification should be in the exception, not the rule, and shall be granted sparingly within the DRB's sole discretion. Reconsideration shall not be granted merely so that a Contracting Party may repeat the same arguments or present arguments available to it when the dispute was heard initially.

A. Clarification. Should the dispute remain unresolved because of a bona fide lack of clear understanding of the DRB's advisory opinion, a Contracting Party may request that the DRB clarify specified portions of its advisory opinion. The request shall only specify the item where clarity is sought, and shall not involve renewed argument.

B. Reconsideration. A Contracting Party may request that the DRB reconsider a dispute upon the submission of new evidence or if it appears that the DRB clearly misunderstood or failed to consider relevant, material facts.

4.8 A request for reconsideration or clarification submitted prior to any deadline to take action with respect to an advisory opinion shall suspend all such deadlines for all Contracting Parties with respect to the advisory opinion in question; the DRB shall, with input from the Contracting Parties, determine and communicate new deadlines.

5.0 FEES AND EXPENSES OF DRB MEMBERS

5.1 The Owner and Contractor shall equally share the fees and expenses of all three DRB members for services rendered under the Three Party Agreement. The Owner shall provide a monetary allowance as indicated on the Bid or Proposal Form for its estimated share of the DRB fees and expenses. The Contractor shall include in its Bid or Proposal Price the amount the Contractor estimates is needed for its share of such fees and expenses. Should the Owner's total pro-rata share exceed the allowance during the performance of the DRB process, then the Owner shall process a change order to pay its additional share with the Contractor paying its additional share from its own funds. The Owner shall not be responsible for paying the Contractor's share of the DRB fees and expenses.

5.2 The Owner or the OAR will prepare for review and deliver to the DRB and the Contracting Parties, the minutes of meetings and provide administrative services, such as conference facilities and secretarial services. Each Contracting Party shall bear its own costs to copy and distribute written documentation submitted to the DRB and other Contracting Party. Additional copy charges, if any, shall be paid by the requesting Contracting Party. Each Contracting Party shall pay its own attorneys' fees and costs associated with participating in the DRB process.

5.3 If the DRB desires special services, such as legal consultation, accounting, data research and etc., both Contracting Parties must agree and the Contracting Parties will share the costs equally.

6.0 THREE PARTY AGREEMENT

6.1 The DRB members, the Owner and Contractor shall execute the Three Party Agreement as soon as reasonably possible after the members are selected.

7.0 PUBLIC RECORDS

7.1 Each DRB member and Contracting Party shall observe and comply with all applicable public records laws (i.e., Chapter 119, Florida Statutes). However, upon the receipt of a public records request, the parties to the Three Party Agreement shall immediately notify the Owner and obtain prior written consent from the Owner before releasing any public record. The Owner shall receive copies of all records provided to the DRB, and shall be the designated custodian of such records for the purposes of complying with the provisions of Chapter 119, and to the extent that the DRB and DRB members are "acting on behalf of" the Owner. Moreover, to the extent that a DRB member is "acting on behalf of" the Owner pursuant to Section 119.0701(1)(a), *Florida Statutes*, the DRB member must comply with Florida's public records laws; specifically, the DRB member must: (1) Keep and maintain public records required by the Owner to perform the service; (2) Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law; (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Owner; and (4) Upon completion of the contract, transfer, at no cost, to the Owner all public records in possession of the contractor or keep and maintain public records required by the Owner to perform the service. If the contractor transfers all public records to the Owner upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.

8.0 LIABILITY OF DRB MEMBERS

8.1 No DRB member shall be personally liable for any act or omission in the scope of his or her capacity as a DRB member as provided in these Contract Documents, unless such DRB member acted in bad faith or with malicious purpose or in a manner exhibiting wanton or willful disregard of his or her responsibilities.

END OF SECTION 00 73 83.13

THIS SECTION ONLY TO BE UTILIZED WITH THE CONCURRENCE OF THE DIRECTOR OF CONSTRUCTION.

SECTION 00 73 83.19 – DISPUTE REVIEW BOARD THREE PARTY AGREEMENT

DISPUTE REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEMENT, hereinafter called “**Agreement**”, made and entered into this _____ day of _____, 20____, between the Greater Orlando Aviation Authority (“**Owner**”) and _____ (“**Contractor**”) and the Dispute Review Board, (“**Board**”), and consisting of three members: _____, _____, and _____.

WITNESSETH, that

WHEREAS, the Owner is now engaged in the construction of BP-, and

WHEREAS, the BP-«BPNo» 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 Owner, one selected by the Contractor, and the third member selected by these two;

WHEREAS, each member has completed a Disclosure Statement which is attached hereto and made a part of this Agreement;

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 Owner, the Owner has provided, in the Contract, for the establishment of the Board. The intent of the Board is to fairly and impartially consider disputes placed before it and provide written advisory opinions for resolution of these disputes to both the Owner and the Contractor. The members of the Board shall perform the services necessary to participate in the Board’s actions described in Section 00 73 83.13, Dispute Review Board, of the Contract Documents, which is incorporated herein by reference. The members of the Board shall be familiar with the Code of Ethics promulgated by the Dispute Review Board Foundation, and shall perform the services under this Agreement and described in Section 00 73 83.13 in accordance with that Code of Ethics.

**II
TIME FOR BEGINNING AND COMPLETION**

The Board is to be in operation throughout the life of the active Project until Final Payment.

**III
PAYMENT**

The Board members shall be paid by the Contractor for services rendered under this Agreement as provided hereinafter. Such payments shall be full compensation for work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to the operation of the Board. The Board members shall comply with all applicable portions of 48 CFR 31 (Federal Acquisition Regulations: Contract Cost Principals and Procedures), if applicable to the funding for the Contract.

All Inclusive Fee: Each Board Member will be paid a lump sum fee of \$1,200 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. In addition, Board members shall be compensated for a maximum of four (4) hours per month at the rate of \$200 per hour for time spent reviewing project records outside of meeting days. Subsequent changes in the billing rate must be authorized by a Supplemental Agreement to this Agreement.

An all-inclusive per hearing cost of \$8,000 has been established for compensation for all members of the Board for participation in each hearing. The Board chairman will receive \$3,000 for participation in the hearing while the two remaining members will receive \$2,500 each. If an additional day is required for the hearing, additional compensation will be made for each additional day in the amount defined for a regularly scheduled project meetings. No other preparation costs will be reimbursed for each hearing.

If a Board member is required to travel more than 50 miles one way to attend a regularly scheduled meeting or a hearing, then each such member shall receive compensation for mileage at the current Standard Mileage Rates published by the Internal Revenue Service. In addition, if a member is required to spend a night associated with each regularly scheduled Board meeting or a hearing, lodging costs shall be reimbursed at the current Per Diem Rates for Orlando, Florida as published by the U.S. Government Services Administration (GSA). If air travel is required, such travel must be arranged by the Owner in accordance with the Owner's travel policy. No other compensation will be made for travel related expenses.

IV NO ASSIGNMENT

The Board members shall not assign any of the work of this Agreement.

V TERMINATION OF AGREEMENT

This Agreement may be terminated by mutual agreement of the Owner 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 or without cause only by their original appointer; 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 the other two members plus either the Owner or the Contractor.

VI INDEPENDENT CONSULTANT

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 consultant and not as an employee or agent of either the Owner or the Contractors. The parties 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.

VII 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 shall be brought in Orange County, Florida the exclusive venue for such action, and shall be governed by Florida law.

VIII PUBLIC RECORDS

Upon receipt of any public records request for documents, papers, letters, or other materials made or received by the parties to this Agreement, the parties hereto shall immediately notify the Owner and obtain prior written consent from the Owner before releasing such records. The Owner shall be afforded an opportunity to assert any privilege or exemption that is available under Florida law concerning the production of such records to third parties prior to production.

Each Board member and the Contractors shall observe and comply with all applicable public records laws (i.e., Chapter 119, *Florida Statutes*). The Owner shall receive copies of all records provided to the Board, and shall be designated the custodian of the Board and Board members' records for the purposes of complying with the provisions of Chapter 119, and to the extent that the Board and Board members are "acting on behalf of" the Owner.

Moreover, to the extent that the Board and the Board members are "acting on behalf of" the Owner pursuant to Section 119.0701(1)(a), *Florida Statutes*, the Board and the Board members must comply with Florida's public records laws; specifically, the Board and Board members must: (1) Keep and maintain public records required by the Owner to perform the service; (2) Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law; (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Owner; and (4) Upon completion of the contract, transfer, at no cost, to the Owner all public records in possession of the Board and the Board members or keep and maintain public records required by the Owner to perform the service. If the Board and Board members transfer all public records to the Owner upon completion of the contract, the Board and Board members shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Board or Board members keep and maintain public records upon completion of the contract, the Board or Board member shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS WHO CAN BE REACHED AT: (407) 825-2032; PUBLICRECORDS@GOAA.ORG; OR "GREATER ORLANDO AVIATION AUTHORITY, PUBLIC RECORDS" ONE JEFF FUQUA BOULEVARD, ORLANDO, FLORIDA 32827

For the purposes of seeking information as set out in the above notice, and without any regard to or determination as to whether the Board or Board members are "acting on behalf of" the Owner pursuant to Section 119.0701(1)(a), *Florida Statutes*, the Board, the Board members and the Contractors may be consider themselves "contractor[s]."

**IX
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 III above, for their performance and services under this Agreement.

**X
CONVICTED VENDOR LIST**

The undersigned acknowledges the following notice: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount set forth in Florida Statutes, Section 287.017, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list."

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

Owner's Board Member

Contractor's Board Member

By: _____

By: _____

Board Selected Member

By: _____

Greater Orlando Aviation Authority

Contractor

By: _____

By: _____

Title: _____

Title: _____

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DISCLOSURE STATEMENT

Pursuant to Section 00 73 83.13, of the «BPNo», «TITLE1_caps» «TITLE2_caps» Contract Documents, each prospective member of the Dispute Review Board shall submit complete disclosure statements for the approval of both the Owner and the Contractor.

1. Please describe your experience or attach a recent biography or resume of experience. If previously provided, this part may be omitted:

2. It is vital to the success of the Dispute Review Board that the parties to the Contract have complete confidence in the DRB's impartiality. Therefore, please disclose any past or present relationship with the parties, directly or indirectly, whether financial, professional, social or of any other kind. See attached Disclosure Guide and Section 2.4 of the Dispute Review Board Specifications for assistance. If any relationships arise during the course of the DRB or if there is any change at any time in the biographical information that you have provided, it must also be disclosed. Any doubt should be resolved in favor of disclosure. If you are aware of such relationship, please describe it below.

- o I have nothing to disclose
- o I hereby disclose the following:

Owner's DRB Member

Dated

APPROVED:

Contractor

Greater Orlando Aviation Authority
(Owner)

By: _____

By: _____

Title: _____

Title: _____

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DISCLOSURE STATEMENT

Pursuant to Section 00 73 83.13, of the «BPNo», «TITLE1_caps» «TITLE2_caps» Contract Documents, each prospective member of the Dispute Review Board shall submit complete disclosure statements for the approval of both the Owner and the Contractor.

1. Please describe your experience or attach a recent biography or resume of experience. If previously provided, this part may be omitted:

2. It is vital to the success of the Dispute Review Board that the parties to the Contract have complete confidence in the DRB's impartiality. Therefore, please disclose any past or present relationship with the parties, directly or indirectly, whether financial, professional, social or of any other kind. See attached Disclosure Guide and Section 2.4 of the Dispute Review Board Specifications for assistance. If any relationships arise during the course of the DRB or if there is any change at any time in the biographical information that you have provided, it must also be disclosed. Any doubt should be resolved in favor of disclosure. If you are aware of such relationship, please describe it below.

I have nothing to disclose

I hereby disclose the following:

Contractor's DRB member

Dated

APPROVED:

Contractor

Greater Orlando Aviation Authority
(Owner)

By: _____

By: _____

Title: _____

Title: _____

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DISCLOSURE STATEMENT

Pursuant to Section 00 73 83.13, of the «BPNo», «TITLE1_caps» «TITLE2_caps» Contract Documents, each prospective member of the Dispute Review Board shall submit complete disclosure statements for the approval of both the Owner and the Contractor.

1. Please describe your experience or attach a recent biography or resume of experience. If previously provided, this part may be omitted:

2. It is vital to the success of the Dispute Review Board that the parties to the Contract have complete confidence in the DRB's impartiality. Therefore, please disclose any past or present relationship with the parties, directly or indirectly, whether financial, professional, social or of any other kind. See attached Disclosure Guide and Section 2.4 of the Dispute Review Board Specifications for assistance. If any relationships arise during the course of the DRB or if there is any change at any time in the biographical information that you have provided, it must also be disclosed. Any doubt should be resolved in favor of disclosure. If you are aware of such relationship, please describe it below.

I have nothing to disclose

I hereby disclose the following:

Board Selected Member

Dated

APPROVED:

Contractor

Greater Orlando Aviation Authority
(Owner)

By: _____

By: _____

Title: _____

Title: _____

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DISCLOSURE GUIDE

The following should be used as a guideline for making disclosures. The term “Project participants” includes the Contractor, Owner, Owner’s Authorized Representative (OAR), the Designer (Architect or Engineer), subcontractors, suppliers or the employer of other Dispute Review Board members.

1. Have you in the past or do you presently have a direct or indirect ownership or financial interest in any of the Project participants?
2. Except for services as a DRB member of the Owner’s projects, have you in the past been an employee, contractor or consultant to any of the Project participants within a period of five years prior to the Contract award?
3. Have you in the past or do you presently have a personal, professional or business relationship with any of the Project participants?
4. Have you had any prior involvement in the Project (other than as a DRB member) of a nature that could be construed to compromise the ability to impartially resolve disputes?
5. Have you ever served as a DRB member for other projects in which any of the Project participants were parties?
6. Have you ever served as an arbitrator in a proceeding in which any of the Project participants were parties?
7. Have you ever served as an expert witness on behalf of any of the Project participants?
8. Have any of the Project participants appeared before you in past Dispute Review Board proceedings?
9. Have you ever sued or been sued by any of the Project participant.

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ORLANDO «AIRPORT_caps» AIRPORT
«BPNo», «TITLE1_caps»
«TITLE2_caps»

DISPUTE REVIEW BOARD
THREE PARTY AGREEMENT
SECTION 00 73 83.19

THIS SECTION ONLY TO BE UTILIZED WITH CONCURRENCE OF THE DIRECTOR OF
CONSTRUCTION.
SECTION 00 73 83.13 - DISPUTE REVIEW BOARD

1.0 OVERVIEW

1.1 A Dispute Review Board (DRB) will be established for this Project to assist in the resolution of disputes arising out of the ~~Contract Documents~~Work. This Section 00 73 83.13 describes the purpose, procedure, function and features of the DRB.

~~4.21.2 The role of the DRB is to issue independent advisory opinions by skilled construction professionals knowledgeable about the Work that evaluate claims and disputes with the purpose of facilitating negotiated resolutions by the Contracting Parties themselves.~~

~~1.3 The DRB will provide special expertise to assist and facilitate the timely and equitable resolution of disputes and controversies between the Owner and the Contractor. Parties other than the Contracting Parties may participate and be heard in the DRB proceedings to assist the Owner or the Contractor in fully presenting its positions, or as may be necessary to protect the Owner's or the Contractor's right to indemnification; for example, if the Owner may later seek indemnification from an Architect or Engineer, the Owner may invite the Architect or Engineer to participate in preparing the Owner's position paper and in presenting the Owner's position at a DRB hearing. The DRB is not intended as a substitute for the Owner and Contractor to proceed in good faith to cooperate with another ("Contracting Parties"). The DRB is not intended as a substitute for the Contracting Parties to proceed in good faith to cooperate with each other and to resolve fairly and expeditiously disputes that arise during the performance of the Work. The Owner and Contractor/Contracting Parties are to make every reasonable effort to resolve disputes before submitting them to the DRB. In the absence of agreement by the Owner and the Contractor, the DRB may determine whether the Contract Documents authorize it to hear and issue an advisory opinion on a claim or dispute; to the extent that the parties agree or the DRB determines that the DRB lacks jurisdiction to hear and issue an advisory opinion on a particular claim or dispute, the parties shall engage in mandatory mediation as to the claim or dispute as set out in Section 8.0.~~

~~1.34 The DRB will be used when the procedure for resolving disputes, as set forth in the Contract Documents and this sectionSection 00 73 83.13, is unsuccessful. The submission to the DRB of any unresolved dispute is a condition precedent to litigation or arbitration of the unresolved dispute. The term of the DRB shall commence at the issuance of the Notice to Proceed or after the three (3) DRB members have been selected in accordance with Section 2.0, whichever is later, and shall continue until the end of the warranty of constructionFinal Payment.~~

~~1.45 The DRB will fairly and impartially consider the disputes referred to it and will provide written advisory opinions to assist in the resolution of the disputes. by the Contracting Parties. The advisory opinions of the DRB will not be binding on either the Owner or any of the ContractorContracting Parties and will not be admissible in any subsequent litigation proceedingslegal proceeding or arbitration.~~

~~1.56 During the dispute resolution process, the Contractor will continue with the Work in accordance with the Contract Documents in a diligent manner and without delay. With respect to the Work that is the subject of a dispute, the Contractor will keep complete records of extra costs and time incurred in accordance with the Force Account provisions of the Contract Documents (unless not reasonably possible). In accordance with the Contract Documents, the Contractor will permit the Owner, its designated representatives and the DRB access to any records needed for evaluating the dispute, without any claim of privilege or confidentiality. Such access will be provided after reasonable notice. The actual, reasonable~~

costs of printing or copying records will be paid by the party requesting the copies; the cost of collecting or reviewing the records prior to production shall be paid by the producing ~~party~~Contracting Party.

1.67 An agreement will be entered into between the Owner, Contractor and DRB members that incorporates the terms and procedures set forth in this Section 00 73 83.13. A copy of this agreement, titled Three Party Agreement, is located in Section 00 73 83.19.

~~1.7 Role of the DRB. The role of the DRB is to issue independent advisory opinions by skilled construction professionals knowledgeable about the Work that evaluate claims and disputes with the purpose of facilitating negotiated resolutions by the parties themselves.~~

2.0 DRB MEMBERSHIP

2.1 The DRB will consist of three members, ~~one~~ One member shall be selected by the Owner and approved by the Contractor, and one member shall be selected by the Contractor and approved by the Owner. The first two members shall select and agree on the third member. Normally, the third member will at all times serve as Chair for all DRB activities. If the third member of the DRB declines to act as Chair, then the chairmanship shall be alternated with the Owner's selected member assuming this position at the first resolution meeting.

2.2 The ~~Owner and the Contractor~~Contracting Parties shall provide notice of their member selection ("Notice of Member Selection") within fourteen (14) calendar days after ~~the date~~issuance of the Notice of Intent to Award the Contract; the Owner and the ContractorProceed; the Contracting Parties shall serve objections, if any, concerning the other ~~party's~~Contracting Party's member ~~selection~~selection within seven (7) calendar days after the Notice of Member Selection. Any objected-to member selection shall be replaced with a new member selection within seven (7) calendar days after the objection is served; the ~~Owner and the Contractor~~Contracting Parties shall serve objections, if any, concerning the replacement member selection within seven (7) calendar days after the ~~objection to the~~replacement member selection; this process may be repeated as needed. The two (2) members selected by the Owner and the Contractor that are not objected-to shall, within fourteen (14) calendar days after the last objection period expires, jointly select the third member and provide notice to the ~~Owner and Contractor~~Contracting Parties; the ~~Owner and the Contractor~~Contracting Parties shall serve objections, if any, concerning this member selection within seven (7) calendar days after that notice. Any objected-to member shall be replaced with a new member selection within seven (7) calendar days after the objection is served; the ~~Owner and the Contractor~~Contracting Parties shall serve objections, if any, concerning the replacement member selection within seven (7) calendar days after the ~~objection to~~selection of the replacement member; this process may be repeated as needed. If three (3) DRB members, because of an impasse, are not empaneled within ninety (90) calendar days after the ~~date~~issuance of the Notice of Intent to Award the Contract to Proceed, then the ~~Owner and Contractor~~Contracting Parties shall engage, and equally share the cost of, a mediator skilled in construction disputes to assist in empaneling three (3) members, with the goal of accomplishing this prior to the issuance of the Notice to Proceed. All as quickly as possible. If already empaneled, all three members shall attend the Pre-Construction Meeting.

2.3 All DRB members shall be experienced with the type of construction methods associated with the Project, in the interpretation of contract documents and in contract dispute resolution. The goal in selecting the third member is to complement the construction experience of the first two members and to provide leadership to the DRB's activities. It is imperative that DRB members show no partiality to either the Contractor or the Owner or have any conflict of interest.

2.4 The criteria and limitations for membership will be as follows:

- A. The ~~persons~~members selected will have no direct or indirect ownership or financial interest in the Contractor, the OAR, the Designer (i.e., the Architect or Engineer of the Project), any subcontractor or supplier of the Project or the employer of other DRB members.
- B. Except for services as a DRB member of the Owner's projects, no member shall have been an employee, contractor or consultant to the Contractor or the Owner, the OAR, the Designer, any subcontractor or supplier of the Project within a period of ~~ten (10)~~five (5) years prior to the date of the Notice of Intent to Award Contract.
- C. No member shall have had a personal, professional or business relationship with the Owner or the Contractor or either's subcontractors or subconsultants of the ~~project~~Project (or an employee or officer of the Owner or the Contractor) of a nature which could be construed to compromise the ability to impartially issue advisory opinions concerning claims or disputes.
- D. No member shall have had any prior involvement in the Project (other than as a DRB member) of a nature which could be construed to compromise the ability to impartially issue advisory opinions concerning claims or disputes.
- E. No member shall be employed by the Contractor or the Owner, the OAR, the Designer, or any subcontractor or supplier of the Project during the term of the Contract, except as a DRB member pursuant to the Three Party Agreement or as a DRB member on another project.
- F. During the term of the Contract, no discussion or agreement shall be made between a DRB member and Owner or the Contractor regarding employment after the Contract is completed.
- G. During the term of the Contract, ex parte communications between a DRB member and the Owner or the Contractor or either's subcontractors or subconsultants of the project are prohibited concerning the Project or any dispute arising out of the Project, including solicitation of any DRB member's advice or consultation concerning the Project.

2.5 Before appointments are final, the first two prospective members will submit complete disclosure statements to ~~both the Owner and the Contractor~~Contracting Parties. The disclosure statement shall conform to the form attached as an Exhibit to ~~this specification~~these Specifications. Each disclosure statement will include the prospective member's experience and a declaration describing all past, present and anticipated or planned future relationships to the Project and with the ~~parties to~~Contracting Parties, the ~~Contract~~OAR, Consultants or any subcontractor or supplier of the Project. The third DRB member will supply a disclosure similar ~~statement~~ to the first two DRB members (and to the ~~Owner and the Contractor~~Contracting Parties before the third member appointment is finalized. The ~~Owner's and Contractor's~~Contracting Parties' DRB members will ensure that the third member meets all of the selection criteria listed above. A DRB member must update the disclosure statement if the member discovers circumstances, or if events occur, that would disqualify the DRB member under Section 2.4, above, or that would change a DRB member's responses to the disclosure statement; in any event, each DRB member must update the disclosure statement annually or as requested by the Owner.

2.6 If for whatever any reason a DRB member fails or is unable to serve, or violates any of the criteria in Section 2.4 (i.e.g., failing to disclose a relationship), the Chair (or failing the action of the Chair, then either of the other members) shall inform the ~~parties~~Contracting Parties and such non-serving member shall be replaced in the same manner as the member being replaced was selected. A DRB member may withdraw from the DRB upon not less than four (4) weeks' written notice to the Contracting Parties and to the other DRB members. A DRB member may be removed for or without cause by his or her original appointer or appointers; the Owner may remove the Owner-appointed DRB member, the Contractor may remove the Contractor-appointed member, and the Owner/Contractor-appointed members may jointly agree to remove the third member; this procedure applies except in the case of a conflict of interest, in which case the Contracting Parties may jointly agree to remove the DRB member in question. If the Contracting Parties disagree concerning whether a disclosure or conflict of interest renders a DRB member unable to serve by the criteria in Section 2.4, then the DRB member in question may be removed for cause upon the vote of one (1) of the Contracting Parties and the two (2) other DRB members shall jointly make the determination, bearing in mind that the appearance of bias or impropriety by any DRB member may undermine the DRB process. If the replacement DRB member shall be selected in the same manner as

required by Section 2.2 above, except that if a removed member is not replaced within forty-five (45) calendar days efafter removal, and the delay is the result of an impasse, then the Contracting Parties shall engage, and equally share the cost of, a mediator skilled in construction disputes to assist in replacing the removed member. The ~~replaced~~removed DRB member shall not be entitled to additional compensation under the Three-Party Agreement, unless the Owner determines, in its sole discretion, that equitable circumstances exist to justify payment. Replacement shall be considered completed when ~~the new a~~ replacement DRB member executes the Three Party Agreement.

3.0 DRB PROCEDURES

3.1 The DRB will formulate procedures of operation that shall be flexible with respect to the functioning of the DRB and consistent with the existing procedures for contract administration. The DRB shall circulate proposed procedures of operation within fourteen (14) calendar days after the first meeting; within seven (7) calendar days of receiving the proposed procedures of operation, the ~~Owner and the Contractor~~Contracting Parties shall review the proposed procedures of operation and circulate to the DRB and to each other any proposed ~~changes~~changed changes or comments. The DRB may, within its discretion, consider, accept, or discard any of the ~~Owner's and the Contractor's~~Contracting Parties' proposed changes and comments, and shall circulate official procedures of operation within twenty-eight (28) calendar days after the first meeting; however, the Contracting Parties may by written agreement determine certain or all procedures of operation. The DRB may, from time to time, revise its procedures of operation within its discretion, whether on the DRB's own initiative, or at the request of any of the Owner or the Contractor~~Contracting Parties~~. To the extent that the procedures of operation adopted by the DRB conflict with the Contract Documents, the Contract Documents prevail.

3.2 Each DRB member shall be provided a complete set of the Contract Documents. The ~~Owner and the Contractor~~Contracting Parties shall, before each DRB meeting, if requested by the DRB members, provide each member with copies of biweekly or monthly reports already in use on the ~~project~~Project. In consultation with the DRB, the ~~Owner and the Contractor~~Contracting Parties may also agree to provide other reports, documents or submittals generated in connection with administering the Contract Documents (i.e., requests for change orders, etc.).

3.3 The DRB will visit the Project once a month during the first three months of construction of the Project unless the Owner and Contractor decide otherwise. The Owner and Contractor shall together have the discretion to determine the frequency of meetings thereafter, unless a meeting is required to hear a disputed issue that could not be otherwise resolved by the ~~parties~~Contracting Parties. The regularly scheduled meetings will typically be scheduled in connection with the Owner's Job Coordination Meetings (JCMs), ~~except for meetings for unresolved disputes.~~

3.4 ~~The first three (3) monthly meetings~~Each regularly scheduled DRB meeting will consist of an informal discussion of project progress and issues, and a field inspection of the Work. The ~~informal discussion~~DRB meetings will be attended by the DRB and ~~selected personnel~~representatives from the Owner and the Contractor. The field ~~inspection~~inspections will cover all active segments of the Work. The DRB will be accompanied by representatives of both the Owner and the Contractor during ~~the~~each field inspection. Soliciting any DRB member's advice or consultation regarding the Work or the Contract is expressly prohibited unless all Contracting Parties are present for such purposes.

~~3.5 In circumstances of unresolved disputes, the DRB will meet until the unresolved disputes are concluded. Subsequent~~3.5 After the first three regularly scheduled meetings, subsequent meetings do not have to take place at the Project site. The location and frequency of subsequent meetings will be agreed upon by the Owner, the Contractor and the DRB depending upon the progress of the Work. Each meeting will consist of an informal round table discussion and, if necessary, a field inspection of the Work.

The round table discussions may include presentations from each of the Contracting Parties to the DRB addressing, without limitation, the following items: construction work accomplished since the last meeting, current status of the Work, the current and future schedule, payment status, potential future problems that may come before the DRB, proposed solutions to those problems, and an update regarding previously handled or ongoing problems.

3.6 — The Agenda for regularly scheduled meetings of the DRB will generally include the following:

- H.A. Meeting opened by the Chair of the DRB.
- I.B. Description by the Contractor of the work accomplished since the last meeting, current status of the work schedule, anticipated work to be completed prior to the next scheduled DRB meeting, potential problems and proposed solutions.
- J.C. Discussion by the Owner of work schedule, potential problems and any general observations of issues that might possibly become problems or disputes.
- K.D. Update by DRB on status of its advisory opinion of the resolution of a pending disputed matter, if applicable.
- L.E. If there is a new dispute, initial discussion commences with remarks by the party requesting Contracting Party raising the meeting dispute, summarizing the dispute, the issues involved and that party's Contracting Party's requested resolution. The other party Contracting Party will then respond with its position their positions. The DRB may request additional information from the Parties regarding the dispute.
- M.F. If there is an ongoing dispute that has not yet been resolved, each party Contracting Party shall address information previously requested by the DRB followed by the responses of the other party's response Contracting Party.
- N. Discussion of the dispute, followed by identification of further action or information needed from the parties and set target dates for providing such action or information to the DRB.
- G. If the Contracting Parties have reached an impasse over resolution of the dispute, the DRB shall set the date and time for a DRB Hearing on the dispute, in accordance with Section 4.0 below.
- O.H. Set a place, date and time for next regularly scheduled DRB meeting.
- P.I. A site visit will may be conducted, at the discretion of the DRB, which shall be accompanied by both the Owner and the Contractor Contracting Parties.

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3.76 During the regularly scheduled meetings, the DRB shall be provided, by the Owner, with an administrative assistant who shall prepare meeting minutes and circulate them for comments, revisions and/or approval by all concerned.

3.87 ~~The Contractor and the Owner shall~~ Contracting Parties are strongly encouraged to participate in ~~the both regularly scheduled~~ DRB meetings and DRB hearings without the presence of legal counsel, although each party Contracting Party is free to consult with, without limitation, legal counsel, consultants, and technical experts before or after the meetings to prepare for or respond to DRB meeting issues. The presence of legal counsel is strongly disfavored and diminishes the efficacy of the DRB process. Legal counsel may not make presentations on behalf of the Contracting Parties, or address the DRB, unless the Contracting Parties involved in the dispute agree otherwise. If a party Contracting Party intends to have legal counsel attend a DRB meeting or hearing, that party Contracting Party shall notify the other parties Contracting Party and the DRB of that intention at least three (3) calendar days prior to the meeting or hearing; the other Contracting Parties involved in the dispute may respond promptly concerning whether they will also have legal counsel present.

4.0 RESOLUTION OF DISPUTES

4.1 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 ~~both parties~~ the Contracting Parties and the time periods stated below may be shortened in order to hasten resolution or lengthened when the issues are complex.

A. If the Owner or Contractor objects to any final decision or position by the other regarding any claim or change order request or other action, and all avenues for resolving such objections by direct negotiation have been exhausted, then either party Contracting Party may file a written request for hearing to the DRB ~~within fifteen (15) business days after the last event giving rise to the objection~~, stating clearly the specific issue to be addressed by the DRB, the basis for the party's Contracting Party's objection to the final decision made by the other party Contracting Party, and the requested relief sought in the advisory opinion of the DRB.

B. Upon receipt by the DRB of a written request for hearing, the DRB will first decide when and where to conduct the meeting to hear the dispute. For an urgent matter, the DRB will meet at its earliest convenience. ~~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.~~

~~C. Either party~~ Prior to each DRB hearing on a disputed issue, each Contracting Party shall submit a Position Paper to the DRB which provides details of the dispute, the issues involved and that Contracting Party's requested resolution. A Contracting Party furnishing written documentation to the DRB ~~will~~ shall also furnish copies of such information to the other party Contracting Parties involved in the dispute. Initial written documentation will be furnished a minimum of ~~fifteen (15) business~~ twenty-one (21) calendar days prior to the date the DRB sets the meeting to hear the dispute. ~~Responding written documentation, if any, will be furnished~~ A Contracting Party may respond to the DRB and Position Papers submitted by the other party Contracting Party with a Rebuttal which shall be submitted to the DRB and the other Contracting Party a minimum of ~~seven (7)~~ ten (10) calendar days prior to the DRB meeting. If the DRB requests additional documentation prior to, during or after the meeting, the ~~Owner and/or the Contractor~~ appropriate Contracting Party will provide the requested information to the DRB and to the other party Contracting Party. All written documentation provided ~~by the DRB and~~ any written statements by the other party DRB and the participants shall be and remain confidential settlement negotiations and shall not be admissible in any subsequent legal proceeding or arbitration, except for the limited purpose of demonstrating the performance of a condition precedent, and only to the extent necessary for that purpose; furthermore, each party participant and the DRB shall not disseminate ~~this~~ the written documentation or statements except to the DRB participants and their representatives.

~~D.C.~~ The Contractor and the Owner will each be afforded an opportunity to be heard by the DRB and to offer documentation or whatever information they deem appropriate consultants or counsel (and except as may be required by applicable law).

~~E.D.~~ The DRB's initial advisory opinion concerning entitlement must be provided to the parties Contracting Parties in writing within ~~fifteen (15) business~~ twenty-eight (28) calendar days ~~of~~ after completion of the ~~meeting~~ hearing(s). If ~~both parties~~ the Contracting Parties agree, the DRB ~~will~~ may be granted additional time to formulate its advisory opinion concerning entitlement in cases of extreme complexity.

~~E.~~ Unless otherwise agreed by the parties Contracting Parties, the DRB's initial advisory opinion shall address matters of entitlement only, addressing ~~before any whether, under the Contract Documents, relief is appropriate, and along with the~~ other aspects aspects of entitlement, whether each aspect of any claim or dispute has been timely noticed, substantiated, and, if applicable, certified as required by the Contract Documents. ~~If the DRB determines that entitlement on a dispute or claim does not exist because of an issue concerning matters such as timely notice, substantiation, or certification, the DRB shall, after noting that entitlement does not exist for that reason, continue and consider, for the purposes of discussion, whether entitlement would~~

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~~hypothetically exist, in the absence of matters barring entitlement, such as notice, substantiation, or certification.~~

~~F. Within twenty-eight (28) calendar days after receiving the DRB's initial advisory opinion, the Contracting Parties involved in the dispute shall accept or reject the DRB's initial advisory opinion in writing, with notice of the acceptance or rejection to all Contracting Parties and the DRB. The failure of a Contracting Party to respond within this thirty (30) calendar day period will be deemed a rejection by such Contracting Party of the DRB's advisory opinion.~~

~~F.G. If the DRB determines that there is no entitlement, then the DRB process shall be complete as to the claim or dispute in question and either party may the Contracting Parties involved in the dispute may, in light of the DRB's determination, continue to attempt to negotiate a full resolution of the dispute or otherwise seek recourse as to the claim or dispute in accordance with the Contract.~~

~~G.H. If the DRB determines that there is entitlement, the parties Contracting Parties shall carefully consider the DRB's advisory opinion and attempt to negotiate a full resolution of the dispute. If the parties Contracting Parties cannot agree on an amicable resolution of the dispute within forty-five (45) calendar days after the receipt of the DRB's initial written advisory opinion, then either party Contracting Party may request that the DRB issue a final advisory opinion to resolve address the entire dispute in accordance with the Contract, including an advisory opinion proposing equitable adjustment to the contract Contract and/or an extension or reduction of time, if applicable. The DRB may will then schedule an additional meetings hearing to facilitate the rendition of a final advisory opinion.~~

~~I. Prior to each such additional DRB hearing, each Contracting Party shall submit a Position Paper and Rebuttal to the DRB which provides details of the proposed final resolution of the dispute, based on the DRB's initial advisory opinion regarding entitlement, following the procedure and timeline described above in Paragraph C.~~

~~J. The DRB's final advisory opinion must be provided to the Contracting Parties involved in the dispute in writing within twenty-eight (28) calendar days after the completion of each such additional DRB hearing.~~

~~H.K. Within forty-five (45) calendar days after receiving the DRB's final advisory opinion, both the Owner and the Contractor will the Contracting Parties shall accept or reject the DRB's final advisory opinion in writing, with notice of the acceptance or rejection to the Contracting Parties and the DRB. The failure of a party Contracting Party to respond within this time the forty-five (45) calendar day period will be deemed an acceptance a rejection by such party Contracting Party of the DRB's final advisory opinion.~~

~~↳ If the Owner and the Contractor Contracting Parties involved in the dispute are able to resolve the dispute (with or without the aid of the DRB's advisory opinions), then the Owner will promptly process any required Contract changes Modification.~~

~~J. If the dispute remains unresolved, either party may seek reconsideration of the recommendation by the Board, but only when there is new evidence to present.~~

~~K.L. If the DRB's final advisory opinion is rejected, by either party, either party by a Contracting Party, then any Contracting Party may seek recourse in accordance with the Contract.~~

~~4.2 The Owner and the Contractor shall have representatives at all dispute resolution hearings. The Contracting Party requesting the DRB hearing will first discuss the dispute, followed by the other Contracting Party. Each Contracting Party will then be allowed successive rebuttals until all aspects are fully covered. The DRB members and the Contracting Parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional meetings may be necessary in order to consider and fully understand all of the information presented by both Contracting Parties. During the meetings, no DRB member will express any opinion concerning the merit of any facet of the dispute.~~

~~4.3 After the DRB hearing is concluded, the DRB will meet in private to formulate advisory opinions supported by two (2) or more members. As set forth above, the DRB's advisory opinion must be in writing~~

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and provided to both Contracting Parties. The advisory opinion shall be based on the pertinent Contract provisions, the documents submitted and the facts and circumstances involved in the dispute.

4.24.4 The DRB will make every effort to issue unanimous advisory opinions. If a unanimous advisory opinion is not possible, the dissenting member may, but is not required to, prepare a minority advisory opinion.

4.5 The fact that the DRB considered the dispute, the qualifications of the DRB members, the DRB's advisory opinion, the DRB meetings, whether the parties Contracting Parties accepted or rejected the DRB's advisory opinion and all information submitted or statements made in connection with the DRB procedure process are confidential settlement negotiations and are not admissible in any subsequent legal proceedings proceeding or arbitration, except for the limited purpose of demonstrating the performance of a condition precedent, and only to the extent necessary for that purpose.

4.36 In the absence of a change order or written agreement signed by the parties (not including an acceptance contemplated by Section 4.1.H), Contracting Parties, no advisory opinion of the DRB, whether initial or final or of any other form, is binding on the parties Contracting Parties in any way, even if all parties Contracting Parties accept the advisory opinion as provided in Section 4.1.H.(s).

4.4 Reconsideration and Clarification of DRB Advisory Opinions. 4.7A request for reconsideration or clarification shall may be submitted to the DRB within fourteen (14) calendar days after the issuance of the advisory opinion in question, unless the parties agree otherwise but only if either of the following two conditions exist. Reconsideration and clarification should be in the exception, not the rule, and shall be granted sparingly within the DRB's sole discretion. Reconsideration shall not be granted merely so that a Contracting Party may repeat the same arguments or present arguments available to it when the dispute was heard initially.

A. Clarification. Should the dispute remain unresolved because of a bona fide lack of clear understanding of the DRB's advisory opinion, a Contracting Party may request that the DRB clarify specified portions of its advisory opinion. The request shall only specify the item where clarity is sought, and shall not involve renewed argument.

B. Reconsideration. Repeated requests for reconsideration or clarification are disfavored. A Contracting Party may request that the DRB reconsider a dispute upon the submission of new evidence or if it appears that the DRB clearly misunderstood or failed to consider relevant, material facts.

4.8 A request for reconsideration or clarification submitted prior to any deadline to take action with respect to an advisory opinion shall suspend all such deadlines for all parties Contracting Parties with respect to the advisory opinion in question; the DRB shall, with input from the parties Contracting Parties, determine and communicate new deadlines. The parties may seek reconsideration as provided below:

A. Clarification. Should the dispute remain unresolved because of a bona fide lack of clear understanding of the DRB's advisory opinion, a party may request that the DRB clarify specified portions of its advisory opinion. The request shall only specify the item where clarity is sought, and not involve renewed argument.

B. Reconsideration. A party may request that the DRB reconsider a dispute upon the submission of new evidence or when the DRB clearly misunderstood or failed to consider relevant, material facts. Reconsideration shall not be granted merely so that a party may repeat the same arguments or present arguments available to it when the dispute was heard initially.

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5.0 THE DRB RESOLUTION MEETING

~~5.1 The DRB shall be provided with documentation from both parties for study before the meeting to hear disputes. Copies of such materials shall be provided to each party. All written documentation provided to the DRB and the other party, and any records of the DRB meeting, shall be and remain confidential settlement negotiations and shall not be admissible in any subsequent legal proceeding or arbitration.~~

~~5.2 While the DRB may keep a record of its sessions during consideration of a dispute, the DRB will not be required to keep a formal record. Audio or video recording of the meeting is not allowed.~~

~~5.3 The Owner and the Contractor will have representatives at all dispute resolution meetings. The party requesting DRB review will first discuss the dispute, followed by the other party. Each party will then be allowed successive rebuttals until all aspects are fully covered. The members and the parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional meetings may be necessary in order to consider and fully understand all of the information presented by both parties. During the meetings, no member will express any opinion concerning the merit of any facet of the dispute.~~

~~5.4 After the meeting is concluded, the DRB will meet in private to formulate advisory opinions supported by two (2) or more members. All DRB deliberations will be conducted in private, with individual views kept strictly confidential. No minutes shall be prepared for the DRB private meetings. As set forth above, the DRB's advisory opinion must be in writing and provided to both parties. The advisory opinion shall be based on the pertinent Contract provisions, the documents submitted and the facts and circumstances involved in the dispute.~~

~~5.5 The DRB will make every effort to issue unanimous advisory opinions. If a unanimous advisory opinion is not possible, the dissenting member may (but is not required to) prepare a minority advisory opinion.~~

6.0 FEES AND EXPENSES OF DRB MEMBERS

~~6.1 The Owner and Contractor shall equally share the fees and expenses of all three DRB members for services rendered under the Three Party Agreement. The Owner shall provide a monetary allowance as indicated on the Bid or Proposal Form for its estimated share of the DRB fees and expenses. The Contractor shall include in its bid Bid or proposal price Proposal Price the amount the Contractor estimates is needed for its share of such fees and expenses. Should the Owner's total pro-rata share exceed the allowance during the performance of the DRB process, then the Owner shall process a change order to pay its additional share with the Contractor paying its additional share from its own funds. The Owner shall not be responsible for paying the Contractor's share of the DRB fees and expenses.~~

~~6.2 The Owner or the OAR will prepare for review and deliver to the DRB and the parties Contracting Parties, the minutes of meetings and provide administrative services, such as conference facilities and secretarial services. Each Contracting Party shall bear its own costs to copy and distribute written documentation submitted to the DRB and other Contracting Party. Additional copy charges, if any, shall be paid by the requesting Contracting Party. Each Contracting Party shall pay its own attorneys' fees and costs associated with participating in the DRB process.~~

~~6.3 If the DRB desires special services, such as legal consultation, accounting, data research and etc., both parties Contracting Parties must agree and the Contractor and the Owner Contracting Parties will share the costs equally.~~

7.0 THREE PARTY AGREEMENT

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~~76.1~~ The DRB members, the Owner and Contractor shall execute the Three Party Agreement as soon as reasonably possible after the members are selected.

~~8.0~~ — MANDATORY MEDIATION

~~8.1~~ — To the extent that the DRB lacks jurisdiction to hear or issue advisory opinions on a claim, dispute, or matter in question arising out of the Work, whether the jurisdictional determination is made by agreement of the parties, the DRB, or otherwise, such claim, dispute or other matter in question shall be subject to mandatory pre-suit mediation under the auspices of a mediator to be selected by the parties. Mediation must occur before a lawsuit is filed.

~~9~~

~~7.0~~ PUBLIC RECORDS

~~97.1~~ Each DRB member and Contracting Party shall observe and comply with all applicable public records laws (i.e., Chapter 119, Florida Statutes). However, upon the receipt of a public records request, the parties ~~hereto to the Three Party Agreement~~ shall immediately notify the Owner and obtain prior written consent from the Owner before releasing any public record. The Owner shall receive copies of all records provided to the DRB, and shall be the designated custodian of such records for the purposes of complying with the provisions of Chapter 119, ~~and to the extent that the DRB and DRB members are "acting on behalf of" the Owner. Moreover, to the extent that a DRB member is "acting on behalf of" the Owner pursuant to Section 119.0701(1)(a), Florida Statutes, the DRB member must comply with Florida's public records laws; specifically, the DRB member must: (1) Keep and maintain public records required by the Owner to perform the service; (2) Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Owner; and (4) Upon completion of the contract, transfer, at no cost, to the Owner all public records in possession of the contractor or keep and maintain public records required by the Owner to perform the service. If the contractor transfers all public records to the Owner upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.~~

~~498.0~~ LIABILITY OF DRB MEMBERS

~~40.1~~ — Each DRB member shall have the same immunity as does a mediator appointed by Court order, as provided by Florida law under Section 44.107, Florida Statutes (2015).

~~8.1~~ — No DRB member shall be personally liable for any act or omission in the scope of his or her capacity as a DRB member as provided in these Contract Documents, unless such DRB member acted in bad faith or with malicious purpose or in a manner exhibiting wanton or willful disregard of his or her responsibilities.

END OF SECTION 00 73 83.13

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THIS SECTION ONLY TO BE UTILIZED WITH THE CONCURRENCE OF THE DIRECTOR OF CONSTRUCTION.

SECTION 00 73 83.19 – DISPUTE REVIEW BOARD THREE PARTY AGREEMENT

DISPUTE REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEMENT, hereinafter called “**Agreement**”, made and entered into this _____ day of _____, 20____, between the Greater Orlando Aviation Authority (“**Owner**”) and _____ (“**Contractor**”) and the Dispute Review Board, (“**Board**”), and consisting of three members: _____, _____, and _____.

WITNESSETH, that

WHEREAS, the Owner is now engaged in the construction of BP-, and

WHEREAS, the BP-«BPNo» 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 Owner, one selected by the Contractor, and the third member selected by these two;

WHEREAS, each member has completed a Disclosure Statement which is attached hereto and made a part of this Agreement;

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 Owner, the Owner has provided, in the ~~BP-«BPNo»~~ Contract, for the establishment of the Board. The intent of the Board is to fairly and impartially consider disputes placed before it and provide written advisory opinions for resolution of these disputes to both the Owner and the Contractor. The members of the Board shall perform the services necessary to participate in the Board’s actions described in Section 00 73 83.13, Dispute Review Board, of the Contract Documents, which is incorporated herein by reference. The members of the Board shall be familiar with the Code of Ethics promulgated by the Dispute Review Board Foundation, and shall perform the services under this Agreement and described in Section 00 73 83.13 in accordance with that Code of Ethics.

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**II
TIME FOR BEGINNING AND COMPLETION**

The Board is to be in operation throughout the life of the active ~~BP-contract and, if needed, for a reasonable post-construction period following final acceptance of the project but not to exceed the date the Owner administratively closes the Contract for construction of the project~~Project until Final Payment.

**III
PAYMENT**

The Board members shall be paid by the Contractor for services rendered under this Agreement as provided hereinafter. Such payments shall be full compensation for work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to the operation of the Board. The Board members shall comply with all applicable portions of 48 CFR 31 (Federal Acquisition Regulations: Contract Cost Principles and Procedures), if applicable to the funding for the Contract.

All Inclusive Fee: Each Board Member will be paid a lump sum fee of \$1,200 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. In addition, Board members shall be compensated for a maximum of four (4) hours per month at the rate of \$200 per hour for time spent reviewing project records outside of meeting days. Subsequent changes in the billing rate must be authorized by a Supplemental Agreement to this Agreement.

An all-inclusive per hearing cost of \$8,000 has been established for compensation for all members of the Board for participation in each hearing. The Board chairman will receive \$3,000 for participation in the hearing while the two remaining members will receive \$2,500 each. If an additional day is required for the hearing, additional compensation will be made for each additional day in the amount defined for a regularly scheduled project meetings. No other preparation costs will be reimbursed for each hearing.

If a Board member is required to travel more than 50 miles one way to attend a regularly scheduled meeting or a hearing, then each such member shall receive compensation for mileage at the current Standard Mileage Rates published by the Internal Revenue Service. In addition, if a member is required to spend a night associated with each regularly scheduled Board meeting or a hearing, lodging costs shall be reimbursed at the current Per Diem Rates for Orlando, Florida as published by the U.S. Government Services Administration (GSA). If air travel is required, such travel must be arranged by the Owner in accordance with the Owner's travel policy. No other compensation will be made for travel related expenses.

IV NO ASSIGNMENT

The Board members shall not assign any of the work of this Agreement.

V TERMINATION OF AGREEMENT

This Agreement may be terminated by mutual agreement of the Owner 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 or without cause only by their original appointer; 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 the other two members plus either the Owner or the Contractor.

VI INDEPENDENT CONSULTANT

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 consultant and not as an employee or agent of either the Owner or the ~~Contractor~~Contractors. The parties 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.

VII 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 shall be brought in Orange County, Florida the exclusive venue for such action, and shall be governed by Florida law.

VIII PUBLIC RECORDS

Upon receipt of any public records request for documents, papers, letters, or other materials made or received by the parties to this Agreement, the parties hereto shall immediately notify the Owner and obtain prior written consent from the Owner before releasing such records. The Owner shall be afforded an opportunity to assert any privilege or exemption that is available under Florida law concerning the production of such records to third parties prior to production.

Each Board member and the Contractors shall observe and comply with all applicable public records laws (i.e., Chapter 119, Florida Statutes). The Owner shall receive copies of all records provided to the Board, and shall be designated the custodian of the Board and Board members' records for the purposes of complying with the provisions of Chapter 119, and to the extent that the Board and Board members are "acting on behalf of" the Owner.

Moreover, to the extent that the Board and the Board members are "acting on behalf of" the Owner pursuant to Section 119.0701(1)(a), Florida Statutes, the Board and the Board members must comply with Florida's public records laws; specifically, the Board and Board members must: (1) Keep and maintain public records required by the Owner to perform the service; (2) Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Owner; and (4) Upon completion of the contract, transfer, at no cost, to the Owner all public records in possession of the Board and the Board members or keep and maintain public records required by the Owner to perform the service. If the Board and Board members transfer all public records to the Owner upon completion of the contract, the Board and Board members shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Board or Board members keep and maintain public records upon completion of the contract, the Board or Board member shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS WHO CAN BE REACHED AT: (407) 825-2032; PUBLICRECORDS@GOAA.ORG; OR "GREATER ORLANDO AVIATION AUTHORITY, PUBLIC RECORDS" ONE JEFF FUQUA BOULEVARD, ORLANDO, FLORIDA 32827

For the purposes of seeking information as set out in the above notice, and without any regard to or determination as to whether the Board or Board members are "acting on behalf of" the Owner pursuant to Section 119.0701(1)(a), Florida Statutes, the Board, the Board members and the Contractors may be consider themselves "contractor[s]."

**IX
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 III above, for their performance and services under this Agreement.

**X
CONVICTED VENDOR LIST**

The undersigned acknowledges the following notice: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount set forth in Florida Statutes, Section 287.017, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list."

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

Owner's Board Member

Contractor's Board Member

By: _____

By: _____

Board Selected Member

By: _____

Greater Orlando Aviation Authority

Contractor

By: _____

By: _____

Title: _____

Title: _____

ORLANDO «AIRPORT_caps» AIRPORT
«BPNo», «TITLE1_caps»
«TITLE2_caps»

DISPUTE REVIEW BOARD
THREE PARTY AGREEMENT
SECTION 00 73 83.19

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DISCLOSURE STATEMENT

Pursuant to Section 00 73 83.13, of the «BPNo», «TITLE1_caps» «TITLE2_caps» Contract Documents, each prospective member of the Dispute Review Board shall submit complete disclosure statements for the approval of both the Owner and the Contractor.

- 1. Please describe your experience or attach a recent biography or resume of experience. If previously provided, this part may be omitted:

- 2. It is vital to the success of the Dispute Review Board that the parties to the Contract have complete confidence in the DRB's impartiality. Therefore, please disclose any past or present relationship with the parties, directly or indirectly, whether financial, professional, social or of any other kind. See attached Disclosure Guide [and Section 2.4 of the Dispute Review Board Specifications](#) for assistance. If any relationships arise during the course of the DRB or if there is any change at any time in the biographical information that you have provided, it must also be disclosed. Any doubt should be resolved in favor of disclosure. If you are aware of such relationship, please describe it below.

- o I have nothing to disclose
- o I hereby disclose the following:

Owner's DRB Member

Dated

APPROVED:

Contractor

Greater Orlando Aviation Authority
(Owner)

By: _____

By: _____

Title: _____

Title: _____

ORLANDO «AIRPORT_caps» AIRPORT
«BPNo», «TITLE1_caps»
«TITLE2_caps»

DISPUTE REVIEW BOARD
THREE PARTY AGREEMENT
SECTION 00 73 83.19

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- o I have nothing to disclose
- o I hereby disclose the following:

_____.

Contractor's DRB member _____ Dated _____

APPROVED:

Contractor _____ Greater Orlando Aviation Authority
(Owner)

By: _____ By: _____

Title: _____ Title: _____

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ORLANDO «AIRPORT_caps» AIRPORT
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- o I have nothing to disclose
- o I hereby disclose the following:

Board Selected Member

Dated

APPROVED:

Contractor

Greater Orlando Aviation Authority
(Owner)

By: _____

By: _____

Title: _____

Title: _____

ORLANDO «AIRPORT_caps» AIRPORT
«BPNo», «TITLE1_caps»
«TITLE2_caps»

DISPUTE REVIEW BOARD
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DISCLOSURE GUIDE

The following should be used as a guideline for making disclosures. The term "Project participants" includes the Contractor, Owner, Owner's Authorized Representative (OAR), the Designer (Architect or Engineer), subcontractors, suppliers or the employer of other Dispute Review Board members.

1. Have you in the past or do you presently have a direct or indirect ownership or financial interest in any of the Project participants?
2. Except for services as a DRB member of the Owner's projects, have you in the past been an employee, contractor or consultant to any of the Project participants within a period of five years prior to the Contract award?
3. Have you in the past or do you presently have a personal, professional or business relationship with any of the Project participants?
4. Have you had any prior involvement in the Project (other than as a DRB member) of a nature that could be construed to compromise the ability to impartially resolve disputes?
5. Have you ever served as a DRB member for other projects in which any of the Project participants were parties?
6. Have you ever served as an arbitrator in a proceeding in which any of the Project participants were parties?
7. Have you ever served as an expert witness on behalf of any of the Project participants?
8. Have any of the Project participants appeared before you in past Dispute Review Board proceedings?
9. Have you ever sued or been sued by any of the Project participant.

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