



I. PARTIES

- A. _____ herein after referred to as the Contracting Agency.
- B. _____ herein after referred to as the Contractor.
- C. Disputes Review Board, hereinafter referred to as the DRB, consisting of three members:
 - 1. _____
 - 2. _____
 - 3. _____

II. CONTRACT

- A. The Contractor and Contracting Agency have entered into a Contract for the construction of the project titled Contract Number _____, SR _____, _____, hereinafter referred to as the Project.
- B. The Contract for the Project provides for the establishment and operation of a DRB to assist in resolving disputes.
- C. The DRB is composed of three members, selected in accordance with the Project Specifications.

III. PURPOSE OF DRB

Assist in and facilitate avoidance of disputes and the timely and impartial resolution of disputes that are referred to it.

IV. DRB SCOPE OF WORK

- A. General:
 - 1. Stay abreast of Project developments by means of periodic meetings and site visits, review of progress reports, meeting minutes, and other job documents, and by other means as mutually agreed by all parties.
 - 2. Examine site conditions or specific construction problems relating to an existing or potential dispute, unless such examination is not practical, or, in the judgment of either the Contracting Agency or the Contractor, would result in a delay to the Project.
 - 3. One of the selected members shall serve as Chair.
 - 4. Execute this Agreement not later than the first Board meeting with representatives of the Contracting Agency and the Contractor.
- B. Establish DRB operating procedures consistent with the requirements and general guidelines set forth in the Contract for the Project.
 - 1. Establish operating procedures mutually agreeable to all parties and consistent with the Contract between the Contracting Agency and Contractor, such as administrative duties; content and format of information which may be presented at DRB hearings; conduct of hearings; and invoicing details. Establish these procedures at the first meeting with representatives of the Contracting Agency and the Contractor.
 - 2. Provide all parties with these operating procedures in written form.
- C. Recommend Resolution of Disputes:
 - 1. Upon receipt by the DRB of a referral of a dispute from either the Contracting Agency or Contractor, the DRB shall schedule and conduct a hearing at a time and location set by the DRB following consultation with the Contracting Agency or Contractor.
 - 2. When proper evaluation of the dispute requires expertise that is not within the collective experience of the DRB, the DRB shall request written approval from the Contractor and the Contracting Agency to engage the services of one or more outside consultants as may be needed to advise the DRB as provided in the Contract.
 - 3. The DRB shall convene internal meetings as needed to review and discuss the dispute, and to formulate the report.
 - 4. Following each hearing and DRB deliberation, the DRB shall issue timely written recommendations, clarifications, and reconsiderations to the Contracting Agency and the Contractor, including the supporting rationale.

5. When requested and deemed appropriate by the DRB, the DRB shall provide executed written responses to requests for clarification or reconsideration made by either the Contracting Agency or the Contractor.
 6. All DRB reports and responses to requests for clarification or reconsideration shall be signed by all three DRB members.
- D. The DRB shall perform services and assume responsibilities, as agreed by all parties, as may be required, including those necessary but not listed herein, to achieve the purpose of this Agreement.

V. RESPONSIBILITIES OF THE PARTIES

A. DRB Responsibilities:

1. Comply with the requirements for Board Members and the DRB Process as found in the Contract between the Contracting Agency and the Contractor.
2. Do not discuss, individually or collectively, issues with the Contracting Agency or the Contractor that could possibly be construed as compromising the DRB's ability to impartially resolve future disputes, such as the conduct of the work and the resolution of construction problems.
3. Do not express an individual or collective opinion of merit, in whole or in part, for any potential or other dispute at any time prior to the issue of a report.
4. Except as required when performing the duties of the Chair, do not meet or communicate with either the Contracting Agency or Contractor in the absence of the other.
5. Consider the facts and conditions forming the basis for a referred dispute impartially and independently, and evaluate the merits based on careful consideration of all Contract requirements, applicable law and regulations, and the facts and circumstances of the dispute.
6. Do not ignore or undermine the clear intent of the Contract, or disregard or alter any requirements of the Contract or allocation of risk specified therein.
7. Do not supplant or otherwise interfere with the respective rights, authority, duties, and obligations of either the Contracting Agency or Contractor as set forth in the Contract documents.
8. Make every effort to reach unanimous recommendations. If this cannot be accomplished, include written minority recommendations and supporting rationale with the report.

B. Contracting Agency Responsibilities:

1. Except for participation in the DRB's activities as provided in the Contract documents and this Agreement, do not solicit advice or consultation from the DRB or its members on matters dealing with the conduct of the work or resolution of problems which might compromise the DRB's ability to impartially resolve future disputes.
2. Furnish to each DRB member one copy of the Contract documents, progress schedule and updates, minutes of progress meetings with the Contractor, change orders, and other documents pertinent to the performance of the Contract and necessary for the DRB to conduct its operations.
3. Coordinate DRB operations in cooperation with the Contractor.
4. Arrange for or provide conference facilities at or near the site, and provide copying services.
5. Cooperate with the Contractor and the DRB to facilitate prevention of disputes and the timely and impartial resolution of disputes.

C. Contractor Responsibilities:

1. Except for participation in the DRB's activities as provided in the Contract documents and this Agreement, do not solicit advice or consultation from the DRB or its members on matters dealing with the conduct of the work or resolution of problems which might compromise the DRB's ability to impartially resolve future disputes.
2. Furnish to each DRB member and to the Contracting Agency, one copy of pertinent documents other than those furnished by the Contracting Agency as may be requested by the DRB.
3. Cooperate with the Contracting Agency and the DRB to facilitate prevention of disputes and the timely and impartial resolution of disputes that are referred to it.

VI. TIME FOR BEGINNING AND COMPLETION OF DRB ACTIVITIES

- A. The DRB shall begin its activities by selecting the Chair. After selection of the Chair, DRB activities shall proceed with preparation for the first meeting, including preparation of the DRB operating procedures.
- B. This Agreement shall survive the termination, resignation or death of any member.
- C. The DRB's jurisdiction under this Agreement shall end by mutual agreement of the Contracting Agency and Contractor.

VII. PAYMENT

- A. Payments made to the DRB members shall constitute full compensation for work performed, travel time and services rendered, and for all materials, supplies and incidentals necessary to serve on the DRB.
- B. Payment for services rendered by DRB members shall be at the following rates:
 - 1. For time performing the duties of the DRB for this Project, such as preparing for and attending meetings or hearings; reviewing the parties' submittals, plans and specs in preparation for a hearing; deliberating with DRB members; preparing or reviewing a DRB written recommendation: \$200.00/hour.
 - 2. For time travelling from home office to hotel or job site: \$100.00/hour.
- C. DRB members shall be reimbursed for actual direct, non-salary expenses including automobile mileage, parking, and travel expenses from the point of departure to the initial point of arrival, automobile rental, taxi fares, lodging, printing, long distance telephone, postage, and courier delivery. Meals will be reimbursed at the State of Washington per diem rate. Automobile mileage will be reimbursed at the State of Washington POV Mileage Rate.
- D. Payment made to DRB members in the form of bonus, commission, or consideration of any nature other than that specified hereinabove for performance and service provided under this Agreement, before, during or after the period that this Agreement is in effect, is prohibited.
- E. DRB members shall individually submit invoices for work completed to the Contractor:
 - 1. Not more often than once per month.
 - 2. Based on the agreed billing rate and conditions and on the number of hours expended, together with direct, non-salary expenses including an itemized listing supported by copies of original bills, invoices, and expense accounts.
 - 3. Accompanied by a description of activities performed daily during that period.
- F. The Contractor shall pay acceptable invoices, approved by the Contracting Agency, within 30 calendar days of their receipt.
- G. The Contractor shall be reimbursed for the Contracting Agency's portion of the DRB costs in accordance with payment provisions specified in the Contract for the Project.

VIII. CONFIDENTIALITY AND RECORDKEEPING

- A. No DRB member shall divulge information identified as confidential that has been acquired during DRB activities without obtaining prior written approval from the Contracting Agency and the Contractor.
- B. DRB members shall maintain cost records pertaining to this Agreement for inspection by the Contracting Agency or the Contractor for a period of three years following the end or termination of this Agreement.

IX. ASSIGNMENT

No party to this Agreement shall assign any duty established under this Agreement.

X. TERMINATION

- A. This Agreement may be terminated by mutual agreement of the Contracting Agency and Contractor at any time upon not less than 30 calendar days written notice to the other parties.
- B. Individual DRB members may be terminated by agreement of both the Contracting Agency and the Contractor, or a DRB member may be terminated by the agreement of the other two DRB members, with not less than five calendar day written notice.
- C. If a DRB member resigns, is unable to serve, or is terminated he or she shall be replaced within 30 calendar days using the procedure set forth in the Contract for the Project. This Agreement shall be amended to indicate the member replacement.

XI. LEGAL RELATIONS

- A. The parties to this Agreement expressly acknowledge that each DRB member, in the performance of his or her duties on the DRB, is acting in the capacity of an independent agent and not as an employee of the Contracting Agency or the Contractor.
- B. DRB members shall not participate in subsequent claim proceedings.
- C. The Contracting Agency and the Contractor acknowledge that each DRB member is acting in a capacity intended to facilitate the resolution of claims. Accordingly, it is agreed and acknowledged that, to the fullest extent permitted by law, each DRB member shall be accorded quasi-judicial immunity for any actions or decisions associated with DRB activities.

D. Each DRB member shall be held harmless for any personal or professional liability arising from or related to DRB activities. To the fullest extent permitted by law, the Contracting Agency and the Contractor shall indemnify and hold harmless all DRB members for claims, losses, demands, costs, and damages (including reasonable attorney fees) for bodily injury, property damage, or economic loss arising out of or related to DRB members carrying out DRB activities. The foregoing indemnity is a joint and several obligation.

XII. DISPUTES REGARDING THIS THREE-PARTY AGREEMENT

- A. Claims among the parties arising out of this Agreement that cannot be resolved by negotiation and mutual concurrence and actions to enforce any right or obligation under this Agreement shall be initiated in the Superior Court of Thurston County, Washington.
- B. All questions shall be resolved by application of Washington State Law.
- C. The DRB members hereby consent to the personal jurisdiction of the Court of Thurston County.

XIII. FUNDING AGENCY REVIEW

The federal agency that provided funding for this Project has the right to review DRB recommendations and to attend DRB hearings, but not to attend private DRB deliberations.

XIV. THREE-PARTY AGREEMENT

Entered into on _____, _____, _____, between:
(Month) (Day) (Year)

DRB MEMBERS

By: _____ (Signature)	_____
By: _____ (Signature)	_____
By: _____ (Signature)	_____
	(Name)

CONTRACTOR

By: _____
(Signature)

(Name)

(Title)

(Company)

CONTRACTING AGENCY

By: _____
(Signature)

(Name)

(Title)

(Company)