

**DISPUTE REVIEW BOARD
THREE-PARTY AGREEMENT**
(To be executed after award of the Contract)

I. Parties

- A. Department _____
- B. Contractor _____
- C. Dispute Review Board (DRB) Members:
 - 1. _____
 - 2. _____
 - 3. _____

II. Situation

- A. The Contractor and the Department are now engaged in the construction of the _____ (project name).
- B. The Contract provides for the establishment and operation of a Dispute Review Board (“DRB”) to assist in resolving Disputes as defined therein.

III. Purpose

- A. The purpose of the DRB is to provide an independent and impartial review of such Disputes as are presented to it and to provide non-binding, written findings and recommendations based on the Contract, applicable contract law, industry practices and the facts presented. It is not the purpose, or the responsibility, of the DRB to resolve the Dispute. That responsibility remains with the Contractor and the Department. However, it is anticipated that the DRB’s review and findings and recommendations will assist in the resolution of the matter.

IV. Scope of Work

The scope of work of the DRB includes, but is not limited to, the following:

A. Project Site Visits

- 1. The DRB member(s) shall visit the project site to keep abreast of construction activities and to become familiar with the work in progress. The frequency, time, and duration of these visits shall be mutually agreed upon among the DRB, the Department, and the Contractor.

B. Establish Procedures

- 1. Operating procedures will be in accordance with ITD Standard Specifications for Highway Construction Subsection 105.19, and this Agreement except as modified or altered by the mutual agreement of the Contractor and the Department.

C. Findings and Recommendations

1. Upon receipt by the DRB of a written Request for Review of a Dispute, either from the Contractor or the Department, the DRB shall schedule a time for presentations by the Contractor and the Department and review and consider the Dispute, and thereafter issue written findings and recommendations to the Contractor and the Department.
2. It is expressly agreed that all DRB members are to act impartially and independently in the consideration of facts and conditions surrounding any Dispute. Prior to the deliberation of the DRB after the presentation, no DRB member shall express any opinion concerning the merits of any facet of the case.

D. Other

1. The DRB member(s) shall become familiar with the Contract documents, review periodic reports, and maintain a current file.
2. It is the express continuing responsibility of each member of the DRB to notify the Contractor and the Department, and disclose immediately, any and all existing or potential conflicts of interest, and/or inappropriate contact with either the Contractor or the Department that may exist or develop during the term of this Agreement.
3. Except for providing the services required in the Agreement, the DRB and its individual members shall refrain from giving any advice to either the Contractor or the Department concerning conduct of the work or the resolution of problems which might compromise the integrity of the DRB.
4. The DRB shall perform services not specifically listed herein to the extent necessary to achieve the purpose of this Agreement as agreed upon by the Contractor and the Department.

V. Contractor Responsibilities

- A. Except for its participation in the DRB's activities as provided in the Contract and in this Agreement, the Contractor shall not solicit advice or consultation from the DRB or its member(s) on matters dealing with the conduct of the work or resolution of problems which might compromise the integrity of the DRB.
- B. The Contractor shall:
 1. Furnish each DRB member with pertinent Contractor-prepared documents, such as progress schedules, to supplement the documents provided by the Department.
 2. In cooperation with the Department, coordinate the operation of the DRB.

VI. Department Responsibilities

- A. Except for its participation in the DRB's activities as provided in the Contract and in this Agreement, the Department shall not solicit advice or consultation from the DRB or its member(s) on matters dealing with the conduct of the work or resolution of problems which might compromise the integrity of the DRB.
- B. The Department shall:
 1. Furnish each DRB member with one copy of all Contract documents, including but not limited to the specifications, plans, addenda, minutes of progress meetings, change

orders, and other documents pertinent to the performance of the Contract and necessary to the Board's work.

2. In cooperation with the Contractor, coordinate the operations of the DRB.
3. Furnish conference facilities and provide secretarial and copying services.

VII. Time for Beginning and Completion

- A. The DRB shall be active throughout the duration of the Contract. It shall begin operation following execution of this Agreement and shall terminate its activities on completion of the construction contract after final payment has been made.
- B. The DRB members shall not begin any work under the terms of this Agreement until authorized in writing by the Contractor and the Department.

VIII. Payment

Payment to the DRB member(s) for their service hereunder shall be made in accordance with ITD Standard Specifications for Highway Construction Subsection 105.19.

IX. Termination of Agreement

- A. This Agreement may be terminated by mutual agreement of the Contractor and the Department at any time upon written notice to the members of the DRB.
- B. A DRB member may withdraw from the DRB by providing 28 calendar days written notice. Either the Contractor or the Department may remove any DRB member from the DRB at any time by providing notice thereof to the other party and the remaining members of the DRB if any, and stating the reasons for the decision to remove the member.
- C. Should the need arise to appoint a replacement DRB member, the replacement member shall be selected in a similar manner as the original member was selected. The selection of a replacement DRB member shall begin promptly upon notification of the necessity and shall be completed within 14 calendar days. This Agreement will be amended to indicate changes in DRB membership.

X. Legal Relations

- A. 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 either the Contractor or the Department.
- B. Each DRB member is acting in a capacity intended to facilitate resolution of Disputes. Accordingly, the Contractor and the Department agree that to the fullest extent permitted by law, each DRB member shall be accorded quasi-judicial immunity for any actions or decisions associated with the review and findings and recommendations of Disputes referred to the DRB. No DRB member may be called as a witness by either the Contractor or the Department in subsequent proceedings on the Dispute. Other than the findings and recommendations of the DRB, all records, proceedings and deliberations of the DRB are to be kept confidential to the fullest extent permitted by law. The DRB shall, upon completion

of the project, turn all records of the DRB over to the Department for storage and preservation in accordance with Department policy and state law.

- C. Each DRB member shall be held harmless by the Contractor and the Department from any personal or professional liability arising from or related to DRB activities. To the fullest extent permitted by law, the Contractor and the Department shall indemnify all DRB members for claims, losses, demands, costs, and damages (including reasonable attorney's fees) for bodily injury, property damage, or economic loss arising out of or related to DRB members carrying out DRB functions. The foregoing indemnity is a joint and several obligation of the Contractor and the Department.
- D. The obligations and responsibilities of the DRB members under this Agreement shall not be assignable.

XI. Disputes Regarding This Three-Party Agreement

- A. Disputes among the parties arising out of this Agreement which cannot be resolved by negotiation and mutual concurrence among the parties, and actions to enforce any right or obligation under this Agreement shall be initiated in the Fourth Judicial District Court in Ada County, Idaho.
- B. All questions shall be resolved by application of Idaho state law.
- C. The Department, the Contractor, and the DRB members hereby consent to the personal jurisdiction of the Fourth Judicial District Court in Ada County, Idaho.

XII. Funding Agency Review

- A. The funding agencies for this project have the right to review the DRB findings and recommendations and to attend DRB meetings and presentations, but not to participate in or attend private DRB deliberations.

XIII. Effective Date

A. This Agreement is effective as of _____.

DRB Member	DRB Member	DRB Member
_____	_____	_____
_____	_____	_____
date	date	date

Contractor	Department
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____