

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

I. Parties

- A. DEPARTMENT _____
- B. CONTRACTOR _____
- C. Dispute Review DRT Members:
 - 1. _____
 - 2. _____
 - 3. _____

II. Situation

- A. The DEPARTMENT and CONTRACTOR are now engaged in the construction of the _
Contract No. _____, Project No. _____,

Project Description: _____

- B. Contract No. _____ provides for the establishment and operation of a Dispute Review Team (“DRT”) (pursuant to 105.18) to assist in resolving Disputes as defined therein.

III. Purpose

- A. The objective of the DRT is to assist in and facilitate avoidance of disputes, to impartially consider the disputes referred to it, and to provide written recommendations to the DEPARTMENT and CONTRACTOR for resolution of these Disputes in a timely manner.

The DRT shall provide recommendations based on the facts related to the dispute, the contract and applicable laws and regulations. The DRT shall perform the services necessary to participate in the DRT's actions as designated in Section IV, Scope of Work of this Agreement, the DRT Procedures and Guidelines established as required in this Agreement, and in the project Standard Specifications and Special Provisions, which by this reference are incorporated herein.

IV. Scope of Work

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

A. Project Site Visits

- 1. The DRT members shall visit the project site to keep abreast of construction activities and to become familiar with the work in progress. The frequency, exact time, and duration of site visits and progress meetings shall be as recommended by the DRT and

approved by the DEPARTMENT and CONTRACTOR consistent with the construction activities. Each meeting shall consist of a round table discussion and a field inspection of the work being performed on the contract as necessary. Each meeting shall be attended by representatives of both the DEPARTMENT and CONTRACTOR. It is recommended that the site visits take place at a minimum quarterly. The CONTRACTOR and the DEPARTMENT may agree in writing to waive scheduled progress meetings.

2. In the case of an actual or potential dispute involving an alleged differing site condition or specific construction problem, it may be advantageous for the DRT to review relevant site conditions. If viewing by the DRT would cause delay to the project, videos, photographs, and descriptions of these conditions, collected by either or both parties, will be utilized.

B. Establish Procedures

1. Prior to or during its first meeting at the project site, the DRT shall, with the agreement of all parties, establish written procedures for the conduct of its routine site visits and its hearings of disputes. At a minimum, hearing procedures should address submitting documents, conducting hearings, providing recommendations and associated tasks. The established procedures must comply with the Contract and this Agreement. The procedures need not comply with rules of evidence.

C. Recommend Resolution of Disputes

1. Upon receipt by the DRT of a written Request for Review of a Dispute, the DRT shall convene a hearing to review and consider the Dispute, and issue a written recommendation to the DEPARTMENT and the CONTRACTOR in accordance with the established procedures.

D. Members Disclosures

1. No DRT member shall have prior direct involvement in this contract. No DRT member shall have a financial interest in this contract or parties thereto, including but not limited to the DEPARTMENT, the CONTRACTOR, subcontractors, suppliers, consultants, and legal and business services, within a period 6 months prior to award and during this contract. Exceptions to above are compensation for retirement payments or pensions received from a party that are not tied to, dependent on, or affected by the net worth of the party.
2. DRT members shall fully disclose all direct or indirect professional or personal relationships with all key members of the contract.
3. DRT members shall not serve concurrently on multiple DRTs for the DEPARTMENT.

V. CONTRACTOR Responsibilities

- A. Except for its participation in the DRT's activities as provided in the Contract Documents and in this Agreement, the CONTRACTOR shall not solicit advice or consultation from the DRT or its members on matters dealing with the conduct of the work or resolution of problems which might compromise the DRT's integrity.
- B. The CONTRACTOR shall:
 - 1. Furnish each DRT 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 operations of the DRT.

VI. DEPARTMENT Responsibilities

- A. Except for its participation in the DRT's activities as provided in the Contract Documents and in this Agreement, the DEPARTMENT shall not solicit advice or consultation from the DRT or its members on matters dealing with the conduct of the work or resolution of problems which might compromise the DRT's integrity.
- B. The DEPARTMENT shall:
 - 1. Furnish each DRT member with one copy of all Contract Documents, including but not limited to the specifications, plans, supplementals, weekly progress reports, minutes of progress meetings, change orders, and other documents pertinent to the performance of the contract and necessary to the DRT's work.
 - 2. In cooperation with the CONTRACTOR, coordinate the operations of the DRT.

VII. Time for Beginning and Completion

- A. The DRT members shall not begin any work under the terms of this Agreement until authorized in writing by the DEPARTMENT.
- B. The DRT shall be active throughout the duration of the Contract. It shall begin operation upon written authorization of the DEPARTMENT, following execution of this Agreement, and shall terminate its activities on completion of the Construction contract.

VIII. Payment

- A. Payment to each DRT member shall be \$1500 per day plus travel expenses for the participation at each on-site meeting.

On-site meetings include:

- 1. Meeting at the start of the project
- 2. Scheduled progress meetings for the project with the DRT
- 3. Dispute meetings
- 4. Additional site meetings as requested under section IV.A.2

The \$1500 per day payment includes full compensation for onsite time the DRT member is at an authorized DRT meeting, necessary preparations for the DRT meeting, and travel time to and from the DRT meeting. Travel expenses, including transportation, lodging, meals and incidentals shall be paid in accordance with current DEPARTMENT policies, not to exceed current GSA rates available at <http://www.gsa.gov>. Airfare may be reimbursed at coach rate and car rental may be reimbursed for an economy size car, unless an upgraded vehicle is preapproved by both the DEPARTMENT and the CONTRACTOR.

- B. Before a DRT member spends any time reviewing plans and specifications, evaluating positions, preparing recommendations, or performs any other off-site DRT-related tasks, the CONTRACTOR and the DEPARTMENT must agree to pay for the tasks. Payment to the DRT members shall be a rate of \$200 per hour for these tasks. This payment includes full compensation for incidentals.
- C. Each DRT member shall submit monthly invoices for payment for work completed by the last day of each month by the 10th of the following month during the progression of work. Such invoices shall be in a format approved by the DEPARTMENT and CONTRACTOR, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the DRT member together with direct, non-salary expenses. Satisfactorily submitted invoices shall be paid within 30 days.
- D. Invoices of the DRT members shall be paid by the CONTRACTOR unless otherwise agreed by both parties and the DRT. Payments shall constitute full compensation for work performed and services rendered and for all materials and supplies necessary to serve on the DRT.
- E. The cost records and accounts pertaining to this Agreement shall be kept available for inspection by representatives of the DEPARTMENT or CONTRACTOR for 3 years after final payment.

IX. Termination of Agreement

- A. This Agreement may be terminated by mutual agreement of the DEPARTMENT and the CONTRACTOR at any time upon not less than 4 weeks written notice to the other parties.
- B. DRT members may withdraw from the DRT by providing 4 weeks written notice. DRT members may be terminated only by their original proposer. Only the DEPARTMENT may terminate the DEPARTMENT proposed member; only the CONTRACTOR may terminate the CONTRACTOR proposed member; and the first two members or the DEPARTMENT and CONTRACTOR must agree to terminate the third member.
- C. Should the need arise to appoint a replacement DRT member, the replacement member shall be appointed in the same manner as the original member was appointed. The selection of a replacement DRT member shall begin promptly upon notification of the necessity and shall be completed within 4 weeks. This Agreement will be amended to indicate changes in DRT membership.

X. Legal Relations

- A. Each DRT member, in the performance of his or her duties on the DRT, is acting in the capacity of an independent CONTRACTOR and not as an employee of either the DEPARTMENT or the CONTRACTOR.
- B. The DEPARTMENT and CONTRACTOR expressly acknowledge that each DRT member is acting in a capacity intended to facilitate resolution of Disputes. Accordingly, it is agreed and acknowledged that to the fullest extent permitted by law, each DRT member shall be indemnified and held harmless by NDOT and the CONTRACTOR for any actions or decisions associated with the consideration, hearing, and recommendation of resolution for Disputes rightfully referred to the DRT.
- C. Each DRT member shall be held harmless for any personal or professional liability arising from or related to DRT Activities. To the fullest extent permitted by law, the DEPARTMENT and CONTRACTOR shall indemnify all DRT members for claims, losses, demands, costs, and damages (including reasonable attorney's fees) for bodily injury, or property damage arising out of or related to DRT members carrying out DRT functions. The foregoing indemnity is a joint and severable obligation.
- D. The parties shall not call on any of the DRT members, who served on this contract, as a witness in arbitration or litigation proceedings, which may arise from this contract.
- E. DRT members shall have no claim against the DEPARTMENT or the CONTRACTOR, or both, from claimed harm arising out of the parties' evaluations of the DRT's opinions.
- F. DRT members shall not assign any of the work of this Agreement.

SECTION XI. CONFIDENTIALITY

- A. The parties hereto mutually understand and agree that all documents and records provided by the parties in reference to issues brought before the DRT, which documents and records are marked "Confidential - for use by the DRT only," shall be kept in confidence and used only for the purpose of resolution of subject disputes, and for assisting in development of DRT findings and recommendations; that such documents and records will not be utilized or revealed to others, except to officials of the parties who are authorized to act on the subject disputes, for any purposes, during the life of this Agreement. Upon termination of this Agreement, said confidential documents and records, and all copies thereof, shall be returned to the parties who furnished them to the DRT. However, the parties understand that such documents may be subsequently discoverable and admissible in court or arbitration proceedings unless a protective order has been obtained by the party seeking further confidentiality.

XII. Funding Agency Review

- A. On Federal-Aid contracts, the Federal Highway Administration shall have the right to review the work of the DRT in progress, except for private meetings or deliberations of the DRT that do not become part of the project records.

B. Other Federal requirements in this agreement shall only apply to Federal-Aid contracts.

XIII. Effective Date

A. This Agreement is effective as of _____.

DRT Member

DRT Member

DRT Member

CONTRACTOR

DEPARTMENT

By: _____

By: _____

Title: _____

Title: _____