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(April 4, 2011)
The Board shall consist of one member selected by the Contracting Agency and one member selected by the Contractor, with these two members to select the third member. The first two members shall be mutually acceptable to both the Contracting Agency and the Contractor. If one or both of the two members selected are not acceptable to the Contracting Agency or Contractor, another selection shall be made.

The Contracting Agency and Contractor shall each select a member and negotiate an agreement, separate and apart from this contract, with their respective Board member within the first 60 calendar days after execution of the contract.

The agreements with these two Board members shall contain language imposing the "Scope of Work" and "Suggested Administrative Procedures" included in the Appendix to these Special Provisions. These negotiated agreements shall also include clauses that require the respective selected members to immediately pursue selection of a third member. The goal is to obtain a third Board member who will complement the first two by furnishing a needed expertise, which will facilitate the Board's operations.

The Contracting Agency has entered into "standby" agreements with a number of potential third members. The qualifications of these potential members have been reviewed and deemed acceptable by both the State of Washington Department of Transportation and the Associated General Contractors of Washington. The names of these potential members will be provided to the first two members for consideration. If a selection can be made from the standby list, then the Board may be immediately seated with the execution of a task order under the corresponding standby agreement. Should the first two members decide to select a third member not on the list of standby candidates, then the selected person will be accepted to the Board after he or she executes a standby agreement (Third Party Member Disputes Review Board Consultant Agreement). The acceptable format for this agreement and all accompanying exhibits may be obtained by contacting WSDOT Consulting Services at <http://www.wsdot.wa.gov/Business/Consulting/Agreements/DisputesReview> or may be obtained from the Project Engineer. The fee for the third member shall be included in a task order, issued by the Project Engineer, after the third member standby agreement is fully executed.

In the event of an impasse in selection of the third member, either the Contracting Agency or the Contractor or both may appeal to the Thurston County Superior Court for selection of a third member by the court from a list or lists submitted to the court by the Contracting Agency and/or the Contractor. An impasse shall be considered to have been reached if the two members appointed by the Contracting Agency and the Contractor to the Board have been unable to appoint the third member in a period of 60 calendar days after the approval of the last of such two members.

In case a member of the Board needs to be replaced, the replacement member will be appointed in the same manner as the replaced member was appointed. The appointment of a replacement Board member will begin

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promptly upon determination of the need for replacement and shall be completed within 30 calendar days.

Service of a Board member may be terminated at any time with not less than 30 calendar days notice as follows:

1. The Contracting Agency may terminate service of the Contracting Agency appointed member.
2. The Contractor may terminate service of the Contractor appointed member.
3. The third member's services may be terminated by agreement of the other two members.
4. By resignation of the member.

Termination of a member will be followed by appointment of a substitute as specified above.

No member shall have a financial interest in the Contract, except for payments for services on the Board. The Contracting Agency-selected member and the Contractor-selected member shall not have been employed by the party who selected them within a period of 1-year; except that, service as a member of other Disputes Review Boards on other contracts will not preclude a member from serving on the Board for this Contract.

Compensation for the Board members, and the expenses of operation of the Board, shall be shared by the Contracting Agency and Contractor in accordance with the following:

1. The Contracting Agency will compensate directly the wages and travel expense for its selected member.
2. The Contractor shall compensate directly the wages and travel expense for its selected member.
3. The Contracting Agency and Contractor shall share equally in the third member's wages and travel expense, and all of the operating expenses of the Board. These equally shared expenses shall be billed to and paid by the Contracting Agency. The Contractor's share will be deducted from monies due or coming due the Contractor.
4. The Contracting Agency, through the Engineer, will provide administrative services, such as conference facilities and secretarial services, to the Board and the Contracting Agency will bear the costs for this service.

The Contracting Agency and Contractor shall indemnify and hold harmless the Board Members from and against all claims, damages, losses and expenses, including but not limited to attorney's fees arising out of and resulting from the actions and recommendations of the Board.