

American Arbitration Association
Dispute Review Board
Three-Party Agreement
Effective December 1, 2000

I. Parties

- A. Owner _____
- B. Contractor _____
- C. Dispute Review Board Members:
 - 1. Chair: _____
 - 2. Member: _____
 - 3. Member: _____

II. Project/Contract

- A. The Owner and Contractor are now engaged in the construction of the _____ project (project name), _____ contract (contract name and number, if applicable) dated _____ (contract date).
- B. The _____ (contract name and number, if applicable) provides for the establishment and operation of a Dispute Review Board (“Board”) to assist in resolving Disputes as defined therein.

III. Purpose

- A. The purpose of the Board is to consider, in a timely and impartial fashion, the disputes referred to it, and to provide written recommendations to the Owner and Contractor for resolution of those Disputes.

IV. Scope of Work

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

- A. Periodic Meetings and Project Site Visits
 - 1. The Board members shall meet periodically and visit the project site to keep abreast of construction activities and to become familiar with the work in progress. The frequency, of these meetings and visits shall be every three months or as otherwise mutually agreed upon among the Board, the Owner and the Contractor.
 - 2. In case of an actual or potential dispute involving an alleged differing site condition or specific construction problem, it may be advantageous for the Board to personally review any relevant conditions on a real-time basis. If viewing by the Board would cause delay to the project, videos, photographs and descriptions of these conditions, collected by either or both parties, may be utilized.

B. Establish Procedures

1. The Dispute Review Board shall adopt or develop Operating Procedures as described in Specification 1.03A1 and Hearing Procedures as described in Specification 1.04 F.1.

C. Board Recommendations for Resolution of Disputes

1. Upon receipt by the Board of a written Request for Board Review filed pursuant to Specification 1.04.C., the Board shall convene a hearing pursuant to Specification 1.04.D. and thereafter issue a written recommendation to the Owner and the Contractor pursuant to Specification 1.04 I.
2. All Board members are to act impartially and independently in the consideration of facts and conditions surrounding any dispute.
3. The Board shall make an effort to reach a unanimous recommendation. If this proves impossible, the dissenting member may prepare a minority report.
4. The Board's recommendation, together with explanations of its reasoning, shall be submitted as a written report to both parties. In arriving at its recommendation, the Board shall consider pertinent provisions of the Contract, applicable laws and regulations, and the facts and circumstances involved in the dispute.

D. Other

1. The Board members shall become familiar with the Contract Documents, review periodic reports and maintain a current file.
2. Except for providing the services required in this Agreement, the Board and its individual members shall refrain from giving any advice to either party concerning conduct of the work or the resolution of problems which might compromise the Board's integrity.
3. The Board shall perform services not specifically listed herein to the extent necessary to achieve the purpose of this Agreement.

V. Contractor Responsibilities

- A. The Contractor shall: Furnish each Board member with pertinent Contractor-prepared documents, such as progress schedules, to supplement the documents provided by the Owner.

- B. Except for its participation in the Board's activities as provided in the Contract Documents and in this Agreement, the Contractor shall not solicit advice or consultation from the Board or its members on matters dealing with the conduct of the work or resolution of problems which might compromise the Board's integrity.

VI. Owner Responsibilities

- A. The Owner shall:
 - 1. Furnish each Board member with one copy of all Contract Documents, including but not limited to the specifications, plans, addenda, progress schedule and updates, progress reports or 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 Board, except to the extent that such coordination is provided by the American Arbitration Association (AAA).
 - 3. Furnish conference facilities at or near the site and provide copying services.
- B. Except for its participation in the Board's activities as provided in the Contract Documents and in this Agreement, the Owner shall not solicit advice or consultation from the Board or its members on matters dealing with the conduct of the work or resolution of problems which might compromise the Board's integrity.

VII. Time for Beginning and Completion

- A. The Board shall be active throughout the duration of the Contract. It shall begin operation upon notice of appointment by the AAA and following execution of this Agreement and shall terminate its activities as of the date of final payment to the Contractor or, should any disputes be pending as of that date, thirty days beyond the date on which the Board issues its recommendations regarding those disputes, unless earlier terminated or dissolved by mutual agreement of the Owner and Contractor. The Board's jurisdiction will continue for a period of thirty days beyond the date of its recommendations for the limited purpose of responding to a request for clarification or in the event that the Owner or the Contractor introduces new evidence.
- B. Except for choosing a third member by the first two members, the Board members shall not begin work under the terms of this Agreement until authorized in writing by the AAA.

VIII. Payment

- A. Payment for services of the Board members shall be at the rates provided in the Board members' AAA biographical statements, or at rates agreed to by the parties and Board prior to Board member service.
- B. The first two members will be reimbursed for the time and expense associated with choosing the third member.
- C. Direct, non-salary expenses will be reimbursed at the actual cost to the Board. These expenses may include, but are not limited to air, train, bus fare or automobile mileage, parking and travel expenses from the Board member's point of departure to the initial point of arrival, automobile rental, food and lodging, printing, long-distance telephone, postage and courier delivery. Billing for these expenses shall include an itemized listing supported by copies of the original bills, invoices and expense accounts.
- D. Each Board member may submit invoices to the AAA for payment for work completed not more often than once per month during the progress of work. Such invoices shall be in a format approved by the Owner 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 Board member, together with direct non-salary expenses. Satisfactorily submitted invoices shall be paid to the AAA, for disbursement to the Board member, within 30 days.
- E. Invoices of the Board members shall be paid by the Contractor, who will then bill the owner for 50% of such invoices, unless otherwise agreed to by both parties and the Board. Payments shall constitute full compensation for work performed and services rendered, and for all materials, supplies and incidentals necessary to serve on the Board.
- F. The cost records and accounts pertaining to this Agreement shall be kept available for inspection by representatives of the Owner or Contractor for one (1) year after final payment.

IX. Termination of Agreement

- A. This agreement may be terminated by mutual agreement of the Owner and the Contractor at any time upon not less than 28 days written notice to the other parties.
- B. Board members may withdraw from the Board by providing 28 days written notice to the AAA, for transmittal to the Owner and the Contractor.

X. Immunity and Indemnification

- A. Each Board member, in the performance of his or her duties on the Board, is acting in the capacity of an independent contractor and not as an employee of either the Owner or the Contractor.
- B. The Owner and Contractor expressly acknowledge that each Board 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 Board member and AAA shall be accorded quasi-judicial immunity for any actions or decisions associated with the consideration, hearing and recommendation of resolution for Disputes referred to the Board.
- C. Each Board member and AAA shall be held harmless for any personal or professional liability arising from or related to Board Activities. To the fullest extent permitted by law, the Owner and Contractor shall indemnify all Board members and AAA 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 Board members carrying out Board functions. The foregoing indemnity is a joint and several obligation.

XI. Disputes Regarding This Three-Party Agreement

- A. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

XII. Effective Date

- A. This Agreement is effective as of _____.

Board Member	Board Member	Board Member
_____	_____	_____

Contractor	Owner
_____	_____

By: _____	By: _____
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Title: _____	Title: _____
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