**DISPUTE RESOLUTION ADVISOR THREE-PARTY AGREEMENT**

THIS THREE-PARTY AGREEMENT, hereinafter called "**AGREEMENT**", made and entered into this \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, between the Ohio Department of Transportation, hereinafter called the “**DEPARTMENT**”; and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called the "**CONTRACTOR**"; and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereinafter called the Dispute Resolution Advisor, or "**DRA**"

*WITNESSETH*, that

WHEREAS, the **DEPARTMENT** is now engaged in the construction of project (XXX-XX); and

WHEREAS, the contract for project (XXX-XX) provides for the establishment and operation of the **DRA** to assist in resolving disputes and claims; and

WHEREAS, the **DRA** was selected jointly by the **CONTRACTOR** and the **DEPARTMENT**:

NOW THEREFORE, in consideration of the terms, conditions, covenant, and performance contained herein, or attached and incorporated and made part thereof, the parties hereto agree as follows:

1. **DESCRIPTION OF WORK**

In order to assist in the resolution of disputes and claims between the **CONTRACTOR** and the **DEPARTMENT**, the **DEPARTMENT** has provided in the (XXX-XX) contract, for the establishment of the **DRA**. The purpose of this **DRA**, is to fairly and impartially consider disputes placed before it and provide recommendations for resolution of these disputes to both the **DEPARTMENT** and the **CONTRACTOR. The DRA** shall perform the services necessary to participate in the **DRA’s** actions as designated in Section II, Scope of Work.

1. **SCOPE OF WORK**

The Scope of Work of the **DRA** includes, but is not limited to, the following items of work:

A. Operating Procedures for Dispute Resolution

Upon execution of the **AGREEMENT**, the **DRA** shall establish Operating Procedures that will govern the conduct of its business based on ODOT’s Dispute Resolution Advisor (DRA) Guidelines. The **DRA** may elect to adopt the “Dispute Resolution Advisor Operating Procedures for Dispute Resolution”, or a modified version thereof. At a minimum, these procedures will establish both the requirements and timeframes for submissions of documentation by both the **CONTRACTOR** and **DEPARTMENT**, documentation exchange between the **CONTRACTOR** and **DEPARTMENT**, and the hearing procedures.

The **DRA** will keep current on the progress of this project by: 1) quarterly visits to the project, 2) keeping current files, and 3) joint meetings with **DEPARTMENT** and **CONTRACTOR** personnel. The frequency of project visits and meetings and content of the DRA’s files shall be as agreed upon among the **DEPARTMENT**, **CONTRACTOR**, and the **DRA**.

Upon receipt by the **DRA** of a written *Notice of Intent to Appeal to the DRA* of a dispute, from either the **CONTRACTOR** or the **DEPARTMENT**, the **DRA** shall convene to review and consider the appeal. The time and location of **DRA** meetings shall be determined by the **DRA** withreasonable notice to the **DEPARTMENT** and **CONTRACTOR**. Both the **DEPARTMENT** and **CONTRACTOR** shall be given the opportunity to present their evidence at these meetings. It is expressly understood that the **DRA** is to perform its responsibilities impartially and independently in the consideration of the contract provisions, and the facts and conditions surrounding any written appeal presented by the **DEPARTMENT** or the **CONTRACTOR**, and that the recommendations concerning any such appeal are advisory. The **DRA** recommendations, resulting from their consideration of a dispute or claim, shall be furnished to the **DEPARTMENT** and to the **CONTRACTOR** in accordance with the process set forth in the Dispute Resolution Advisory Process Proposal Note 109. The recommendations shall be based on the pertinent contract provisions and the facts and circumstances involved in the dispute.

Either the **DEPARTMENT** or the **CONTRACTOR** may appeal a recommendation to the **DRA** for reconsideration. However, reconsideration will only be allowed when there is new evidence to present.

B. **DRA** Member Replacement

Should the need arise to appoint a replacement **DRA**, the replacement **DRA** shall be appointed in the same manner as the original **DRA** was appointed. The selection of a replacement **DRA** shall begin promptly upon notification of the necessity for a replacement and shall be completed within 30 calendar days. The **AGREEMENT** shall be amended to indicate the new **DRA**.

1. **DEPARTMENT RESPONSIBILITIES**

The **DEPARTMENT** shall furnish the following services and items:

A. Contract Related Documents

The **DEPARTMENT** shall furnish the **DRA** one copy of the contract for project (XXXXX), change orders, written instructions issued by the **DEPARTMENT** to the **CONTRACTOR**, or other documents pertinent to the performance and therefore, necessary for the **DRA** to perform his/her responsibilities.

B. Coordination and Services

The **DEPARTMENT’s** Engineer for the (XXX-XX) project will, in cooperation with the **CONTRACTOR**, coordinate the operations of the **DRA**. The **DEPARTMENT**, through the Engineer, will arrange or provide conference facilities at or near the contract site and provide secretarial and copying services.

C. Dispute Resolution Documents

1. The **DEPARTMENT** shall cooperate with the **CONTRACTOR** to jointly create a Common Support Document Appendix for each claim that is to be heard by the **DRA**.

This Appendix shall include all reference documents (applicable plans sheets, specification references, sketches or drawings, etc.) common to both the **DEPARTMENT’S** and the **CONTRACTOR’S** dispute resolution submittal. The

**DEPARTMENT** will be responsible for producing 3 copies of this document for the first claim (one copy for the **DRA**, the **DEPARTMENT** and the **CONTRACTOR**). The **CONTRACTOR** will be responsible for producing 3 copies of this document for the second claim. The responsibility will continue to alternate with subsequent claims, if necessary.

2. The **DEPARTMENT** shall furnish the **DRA** one copy of all pertinent documents not included in the Common Support Document Appendix, which are or may become necessary for the **DRA** to perform his/her responsibilities. Pertinent documents are any documents substantiating or justifying the **DEPARTMENT’S** position. A copy of such pertinent documents must also be furnished to the **CONTRACTOR**.

Except for its participation in the **DRA’s** activities as provided in the contract and in this **AGREEMENT**, the **DEPARTMENT** will not solicit advice or consultation from the **DRA** on matters dealing in any way with the project, the conduct of the work, or resolution of problems.

1. **CONTRACTOR RESPONSIBILITY**

The **CONTRACTOR** shall furnish the following items:

A. Contract Related Documents

The **CONTRACTOR** shall furnish the **DRA** a copy of the progress schedule and updates and any other **CONTRACTOR**-generated documents pertinent to the performance and therefore, necessary for the **DRA** to perform his/her responsibilities.

B. Dispute Resolution Documents

1. The **CONTRACTOR** shall cooperate with the **DEPARTMENT** to jointly create a Common Support Document Appendix for each claim that is heard by the **DRA**. This Appendix shall include all reference documents (applicable plans sheets, specifications, sketches or drawings, etc.) common to both the **CONTRACTOR’S** and the **DEPARTMENT’S** dispute resolution submittal. The **DEPARTMENT** will be responsible for producing 3 copies of this document for the first claim (one copy for the **DRA**, the **DEPARTMENT** and the **CONTRACTOR**). The **CONTRACTOR** will be responsible for producing 3 copies of this document for the second claim. The responsibility will continue to alternate with subsequent claims, if necessary.

2. The **CONTRACTOR** shall furnish the **DRA** one copy of all pertinent documents not included in the Common Support Document Appendix, which are or may become necessary for the **DRA** to perform his/her responsibilities. Pertinent documents are any documents which are used in the performance of the work or in justifying or substantiating the **CONTRACTOR's** position. A copy of such pertinent documents must also be furnished to the **DEPARTMENT**.

Except for its participation in the **DRA’s** activities as provided in the contract and in this **AGREEMENT**, the **CONTRACTOR** and the **DEPARTMENT** will not solicit advice or consultation from the **DRA** on matters dealing in any way with the project, the conduct of the work, or resolution of problems.

1. **DURATION OF DRA**

The **DRA** will serve for the life of the (XXX-XX) project only and will not review disputes or claims on any other project unless as otherwise agreed upon by the **DEPARTMENT** and the **CONTRACTOR**. If, after the **DEPARTMENT** has made final acceptance of the project, there are unresolved disputes and claims remaining, the **AGREEMENT** shall remain active and in full force and effect until the project is otherwise administratively closed by the **DEPARTMENT** following final payment so that the **DRA** may continue to serve until all unresolved disputes and claims are resolved.

1. **COMPENSATION**

A. Compensation Allowed

1. **DRA**’s Fees

The **DRA** shall be compensated at an agreed rate of $2,200 per day.

2. Travel Time

The **DRA** shall be reimbursed at the rate of $125 per hour for the time spent traveling to and from the meeting.

3. Transportation Costs

The **DRA** shall be paid for travel expenses incurred in accordance with the Ohio Office of Budget and Management Travel Policy as published on the State of Ohio website (http:www.obm.ohio.gov/mppr/travel.asp).

4. Review and Research Away from the Project

No additional compensation will be made for the time spent in review and research activities by the **DRA** unless an estimate of that time is specifically agreed upon in advance and in writing by the **DEPARTMENT** and the **CONTRACTOR**. Such time that has been agreed to will be compensated at an agreed rate of $225 per hour. The agreed $225 per hour shall include all incidentals.

B. Payment

1. Submission for Compensation

The **DRA** shall submit billable time and travel expenses and required supporting documentation to the **CONTRACTOR** monthly.

2. Compensation

After review and verification by the **CONTRACTOR** and **DEPARTMENT** of the DRA’s submission for compensation, the **CONTRACTOR** shall pay the DRA the fees earned.

C. **CONTRACTOR** Reimbursement

The **DEPARTMENT** will reimburse the **CONTRACTOR** for the **DEPARTMENT’S** share of actual invoice costs of the members under Lump Sum Item Special – Department’s Share of the Dispute Resolution Advisor. The **DEPARTMENT** will not pay a percent mark-up on these costs. The **DEPARTMENT** will make partial payments according to C&MS 109.09.

1. **ASSIGNMENT OF TASKS OF WORK**

The **DRA** shall not assign any of the work of this **AGREEMENT**.

1. **CONFLICTS OF INTEREST**

The **DRA** agrees that he/she does not have any direct or indirect ownership or financial interest in the **CONTRACTOR**, any consultant or consulting firm on the project, any subcontractor or supplier on the project. The **DRA** agrees he/she is not currently employed by the **DEPARTMENT**, the **CONTRACTOR**, or any consultants or consulting firms on the project. Service as a member of any Dispute Resolution Boards, elsewhere as a **DRA** or as an arbitrator or mediator shall not be construed to be employment. The **DRA**, the **DEPARTMENT**, and the **CONTRACTOR** agree that during the life of the contract, no unilateral discussion will be had or agreement will be made between the **DRA** and any party to this **AGREEMENT** for employment after the contract is completed.

In the event that the **DRA’s** status changes in regards to the aforementioned areas of conflict, the **DRA** agrees to immediately disclose this in writing to both the **DEPARTMENT** and the **CONTRACTOR**. Upon receiving such notification, the **DEPARTMENT** or the **CONTRACTOR** may, within seven (7) calendar days, give notice that this **DRA** member is no longer acceptable. In no event, shall a **DRA** participate in a hearing of a dispute or claim involving a firm by which he/she is employed.

1. **TERMINATION OF AGREEMENT**

The parties to this **AGREEMENT** mutually agree that this **AGREEMENT** may be terminated at any time upon not less than a thirty (30) calendar day written notice to the other parties. In the event the **AGREEMENT** is terminated Section 108.02.G of ODOT’s Construction and Material Specifications (C&MS), Dispute Resolution and Administrative Claims Process that was in affect at the time of the bidding of this project will immediately become effective. All disputes in Step 1 or Step 2 of this PN108 Note will continue as in Step 1 or Step 2 as described by Section 108.02.G of ODOT’s C&MS. Any claims in Step 3, to be heard by the **DRA,** will instead be heard by the Director’s Claims Board.

The **DRA** may withdraw by providing 30 days’ notice. The **DRA** may be terminated for cause only by mutual agreement of the **DEPARTMENT** and the **CONTRACTOR**.

1. **LEGAL RELATIONS**

The parties hereto mutually understand and agree that the **DRA** in the performance of duties of the **DRA**, is acting in the capacity of an independent agent and not as an employee of either the **DEPARTMENT** or the **CONTRACTOR** and accordingly, no party to this **AGREEMENT** shall bear a greater responsibility for damages or personal injury than is normally provided by Federal and Ohio Law.

The parties expressly agree that the **DRA** is acting in a capacity intended to facilitate resolution of disputes. The **DEPARTMENT** and the **CONTRACTOR** further agree that neither of them will seek nor require the testimony or production of documents and/or records from the **DRA** in any administrative, judicial or other proceeding.

1. **FEDERAL REVIEW**

The Federal Highway Administration shall be informed of the work of the **DRA** and shall have the right to attend any meeting or hearing of the **DRA**.

*IN WITNESS WHEREOF*, the parties hereto have executed this **AGREEMENT** as of the day and year first above written.

**DRA**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CONTRACTOR**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**OHIO DEPARTMENT OF TRANSPORTATION**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved as to Form Only this

\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_, 20\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Chief Counsel, ODOT