

SCHEDULE "15"

DISPUTE RESOLUTION PROTOCOL

DISPUTE RESOLUTION PROCESS

BETWEEN

THE MAINTENANCE SECTOR OF

B.C. ROAD BUILDERS &  
HEAVY CONSTRUCTION ASSOCIATION

AND

THE MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE

DISPUTE RESOLUTION PROTOCOL

This process has been established as a protocol to assist in resolving disputes without creating legal obligations on either party, except to the extent set forth herein. It is not an arbitration agreement established under the *Arbitration Act* R.S.B.C. 1996, c. 55.

A Contractor wishing to resolve a dispute of a decision or direction of the Province pursuant to this Agreement may use the Dispute Resolution Protocol as follows:

**1. Local Resolution**

- 1.1 The Contractor and the District Manager for the Service Area in which the dispute is located shall meet to discuss and attempt to resolve the dispute.
- 1.2 If there is no resolution within 5 calendar days of the meeting set forth in section 1.1 of this Schedule, the Contractor shall set out its position and proposed resolution in writing (the "**Contractor's Proposal**") in a format similar to Form A attached, referring to the applicable Articles, Sections, or Subsections of this Agreement (including any Schedules thereto), and shall forward the Contractor's Proposal to the Regional Director for the Service Area in which the dispute is located.
- 1.3 The Regional Director in which the dispute is located, on behalf of the Province, shall provide a written response to the Contractor's Proposal in a format similar to Form B attached, within 14 calendar days (not including statutory holidays) of receipt of the Contractor's Proposal. This written response shall either:
  - (a) indicate agreement with the Contractor's Proposal;
  - (b) propose an alternative to the Contractor's Proposal (and provide written reasons for the proposed alternative); or
  - (c) reject the Contractor's Proposal (and provide with written reasons for the rejection).

1.4 If the circumstances in either subsection 1.3(b) or 1.3(c) of this Schedule occur, the Contractor may either accept the Province's response, or file a dispute with the Dispute Review Panel.

1.5 The time limits set forth in section 1 of this Schedule may be extended by mutual written agreement of the parties, but such extensions cannot exceed an additional 14 calendar days in total.

## 2. Request for Dispute Review Panel

2.1 When a dispute is not resolved at the local level pursuant to section 1 of this Schedule and the Contractor wishes to file a dispute with a dispute review panel (the "**Dispute Review Panel**") formed according to the principles set forth in this Schedule, the following process shall be followed:

- (a) the Contractor shall, within 15 days of the Province's response described in subsection 1.3(b) or 1.3(c) of this Schedule, complete a written request to convene a meeting of a Dispute Review Panel (a "**Panel Meeting**") in the form attached as Form A;
- (b) the completed Form A shall be sent by the Contractor to the Secretary, Dispute Review Panel, Ministry of Transportation and Infrastructure, P.O. Box 9850 Stn Prov Govt, Victoria, B.C. V8W 9T5 Attention: Director, Rehabilitation and Maintenance (for distribution to the Dispute Review Panel), with a copy to the B.C. Road Builders & Heavy Construction Association;
- (c) the Secretary shall notify the Director, Rehabilitation and Maintenance, and the Regional Director for the Service Area in which the dispute is located, that a Dispute Review Panel is being established;
- (d) the Regional Director shall state the Province's position in a format similar to Form B attached, and forward same to the Secretary for distribution to the Dispute Review Panel;
- (e) the Secretary shall establish a Dispute Review Panel; and
- (f) if the dispute is resolved directly between the Contractor and the Province prior to the convening of the Dispute Review Panel, then upon both the Province and the Contractor advising the Secretary in writing that the dispute has been resolved, the dispute shall be removed from the Dispute Review Panel's agenda.

## 3. Overarching Principles and Objectives

3.1 The following is a description of the principles and objectives of the Dispute Resolution Protocol and Dispute Review Panel:

- (a) promote positive working relationships, arrive at fair and equitable solutions to the disputes that are available within this Agreement and settle disputes in a prompt, effective, and amicable manner;
- (b) while a dispute is being reviewed, the Contractor shall continue to perform the Services in accordance this Agreement, on the understanding that, if a Dispute Review Panel rules in the Contractor's favor, any remedies due the Contractor and supported by detailed records shall be adhered to by the Province, if the decision is accepted by the parties. The Dispute Review Panel shall determine the effective date of remedies due to the Contractor based on evidence presented at the Panel Meeting;
- (c) the Contractor and the Province agree to abide by the Dispute Resolution Protocol for the Term of this Agreement;

- (d) a review of the Dispute Resolution Protocol can be requested at any time by either party;
- (e) future changes to the Dispute Resolution Protocol may be recommended to the Province and Contractor by a Dispute Review Panel; such recommendations shall be subject to mutual written agreement of the Province and the Contractor; and
- (f) throughout the dispute resolution process it is expected that both parties shall continue to dialogue and seek remedies between them and not solely rely on the Dispute Review Panel for resolution.

#### 4. Panel Members

4.1 The Dispute Resolution Panel shall be comprised of:

- (a) 2 Province members;
  - (b) 2 Contractor members;
  - (c) 1 Chairperson; and
  - (d) 1 Secretary,
- (each a "Panel Member").

4.2 The following is a description of the Panel Members:

- (a) the Director, Rehabilitation and Maintenance, or their designate, shall be a permanent Province Panel Member. In addition, the Province shall create a roster of Panel Member candidates comprised of senior management staff members. The second Province Panel Member, or their designate, shall be selected by the Secretary from this roster on a rotational basis;
- (b) the Chairperson of the Maintenance Sector of B.C. Road Builders & Heavy Construction Association, or their designate, shall be a permanent Contractor Panel Member. In addition, the Contractors shall create a roster of Panel Member candidates comprised of senior management staff members. The second Contractor Panel Member, or their designate, shall be selected by the Secretary from this roster on a rotational basis;
- (c) the Manager, Maintenance Programs, shall be the Secretary;
- (d) the Secretary shall select a Chairperson for each Panel Meeting. The Chairperson shall be an independent, third party individual agreeable to the Director, Rehabilitation and Maintenance (or their designate), and to the Chairperson of the Maintenance Sector of B.C. Road Builders & Heavy Construction Association, or their designate;
- (e) new Panel Members, except those designated as permanent members, shall be appointed for each Panel Meeting; and
- (f) each of the Province Panel Members and the Contractor Panel Members must not be involved with the dispute being resolved by the Dispute Review Panel; this includes, without limitation, that the dispute must not involve a Panel Member's Service Area and/or region. If a Panel Member is involved with the dispute being resolved by the Dispute Review Panel, that Panel Member's designate shall be appointed according to the subsections 4.2(a) and 4.2(b) of this Schedule.

## 5. Evidence and Information

5.1 The Contractor and the Province shall each submit the following evidence and information to the Secretary (who shall forward such evidence and information to a Dispute Review Panel) at least 14 calendar days prior to the Panel Meeting:

- (a) written submission; and
- (b) facts, documents, information, records, photographs, and/or other evidence relevant to the dispute (in written form).

5.2 A Dispute Review Panel may also permit (based on a written request from the Contractor and/or Province), or require, the Contractor and the Province to provide the following additional evidence and information for consideration at a Panel Meeting:

- (a) additional evidence as considered relevant by the Dispute Review Panel;
- (b) expert opinions as considered relevant by the Dispute Review Panel; and
- (c) facts, information and/or evidence relevant to the dispute (in oral form),

with any such additional evidence and information (other than pursuant to subsection 5.2(c) of this Schedule) to be provided:

- (i) at least 15 calendar days prior to the Panel Meeting, if it is being provided based on a written request from the Contractor and/or Province; or
- (ii) within the time period specified by the Dispute Review Panel, if it is being provided based on a requirement of the Dispute Review Panel.

5.3 The Contractor and the Province shall provide frank, candid and timely disclosure of all facts, documents, information, records, photographs, and/or other evidence relevant to the dispute.

5.4 Decisions made by a Dispute Review Panel shall be based upon the evidence and information set forth in sections 5.1 and 5.2 of this Schedule. The only additional evidence a Dispute Review Panel is entitled to consider shall be that derived from site visits, if determined necessary by the Dispute Review Panel.

## 6. Panel Meetings

6.1 The following is a description of the general protocol for Panel Meetings:

- (a) the Secretary shall provide the Contractor and the Province with written notice of the date set for a Panel Meeting; such written notice shall be provided at least 30 calendar days prior to the Panel Meeting;
- (b) Panel Meetings shall convene with all four (4) members plus the Secretary and Chairperson in attendance;
- (c) the Chairperson shall conduct and facilitate the hearings of the Dispute Review Panel;
- (d) in the event of a tie vote by the Panel Members, the Chairperson shall cast the deciding vote;

- (e) at a Panel Meeting:
  - (i) the Contractor shall present its case, with reference to the evidence and information set forth in subsection 5.1 and 5.2 of this Schedule;
  - (ii) after the Contractor has finished presenting its case, the Province shall present its case, with reference to the evidence and information set forth in subsection 5.1 and 5.2 of this Schedule;
  - (iii) the Contractor and/or the Province representative may each question the other on any matter directly related to the dispute;
  - (iv) the Dispute Review Panel may question either the Contractor or the Province representative about any matter deemed relevant;
  - (v) the Contractor shall make any concluding remarks, together with its proposed resolution of the dispute;
  - (vi) after the Contractor has finished presenting its concluding remarks and proposed resolution, the Province shall make any concluding remarks, together with its proposed resolution of the dispute; and
  - (vii) the Dispute Review Panel shall discuss the dispute in the absence of the Contractor and the Province.

## **7. Panel Decisions**

- 7.1 The decision making powers of the Dispute Review Panel shall be limited to the interpretation of this Agreement and all appended material or documents referred to therein. The Dispute Review Panel shall not establish amendments to this Agreement or appended material or documents referred to in this Agreement.
- 7.2 The Dispute Review Panel shall endeavor to render an oral decision on the day of the Panel Meeting.
- 7.3 The Dispute Review Panel must reach a majority decision.
- 7.4 The Dispute Review Panel shall not delay an oral decision or request additional information, unless such delay or request for additional information is related to the need for a job site visit and the Dispute Review Panel unanimously approves proceeding with a site visit, in which case a written decision shall be provided in accordance with section 7.6 of this Schedule.
- 7.5 Following an oral "Decision" or "No Decision" of the Dispute Review Panel, a written decision shall be provided in accordance with section 7.6 of this Schedule.
- 7.6 The Chairperson shall provide a written decision within 14 calendar days of a dispute being heard (or within 14 calendar days of the completion of a site visit pursuant to section 7.4 of this Schedule). The Chairperson shall communicate written decisions by email, with a follow-up copy by mail.
- 7.7 Within 14 days of the Dispute Review Panel's written decision, the Province and the Contractor shall either enter into a written agreement to be bound by the terms of the Dispute Review Panel's written decision or notify the other party that they do not accept the Dispute Review Panel's written decision and that it shall pursue other remedies. If the written decision is accepted, the Province shall, within an additional 14

calendar days, distribute the results of a Dispute Review Panel's written decision to all regions and contractors.

- 7.8 Panel Members agree to keep the details of the dispute and any decision confidential until the parties have agreed to accept or reject the Dispute Review Panel's decision.
- 7.9 If the Dispute Review Panel's decision results in the need for compensation to a party, then such compensation shall be administered under this Agreement, including, but not limited to, in accordance with Articles 6, 7 and 12 of this Agreement and Schedule 3 ("Additional Maintenance Services"). The Dispute Review Panel shall indicate in its decision which of the foregoing Articles or Schedule are applicable.
- 7.10 By majority decision of the Panel Members, the time limits set forth in this section 7 may be extended.

## **8. Administrative Principles**

8.1 The following is a description of certain other administrative principles of the Dispute Resolution Protocol:

- (a) a Dispute Review Panel is to convene as required if there are any disputes to be resolved;
- (b) the Secretary provides only administrative services and shall not vote on Dispute Review Panel decisions. Administration shall include organizing documents, arranging for meeting rooms, mailing out dispute information and requests to Panel Members, mailing out notifications to disputing parties, mailing out decisions to disputing parties, and other matters of an administrative, not decision making, character;
- (c) the Chairperson writes Dispute Review Panel decisions;
- (d) whenever possible, existing Province, BC Road Builder & Heavy Construction Association or Contractor facilities are to be used for Panel Meetings unless Panel Members mutually agree to meet elsewhere;
- (e) in filing a dispute, a Contractor agrees to follow this Dispute Resolution Protocol to its completion and abide by the decision if accepted by the parties;
- (f) when a dispute is filed, the Province agrees to follow the Dispute Resolution Protocol to its completion and abide by the decision if accepted by the parties; and
- (g) the Dispute Review Panel reserves the right, in its sole discretion, to limit the number of disputes being heard to a maximum of three, in order of submission, at any given Panel Meeting.

## **9. Costs**

- 9.1 The Province and Contractor shall pay all normal out-of-pocket costs and expenses for respective Panel Members (which, in the case of the Province, includes the Secretary). Such costs and expenses shall include travel, meals, hotel and other reasonable costs and expenses incidental to the hearing.
- 9.2 A per diem shall be paid to the Chairperson together with the out-of-pocket costs and expenses, and shall be paid equally by the Province and the Contractor..
- 9.3 Unusual costs and expenses such as site visits or third party costs shall not be paid unless reasonably necessary and agreed to by the disputing parties prior to any such costs and expenses being incurred.

Costs and expenses for site visits shall be paid as outlined in section 9.1 and 9.2 of this Schedule and third party costs shall be shared equally by the Province and the Contractor.

- 9.4 To administer the Contractor's side of expenses, B.C. Road Builders & Heavy Construction Association shall charge travel expenses for Contractor Panel Members and the Chairperson to the Contractors whose disputes are heard at a given Panel Meeting. Such charges shall be payable pro rata by each applicable Contractor. Third party costs and site visit expenses for a specific dispute shall not be shared pro rata but shall be charged to the specific Contractor involved.

**"FORM A"**

The Secretary  
Dispute Review Panel  
Ministry of Transportation and Infrastructure  
P.O. Box 9850 Stn Prov Govt  
Victoria, British Columbia  
V8W 9T5  
Attention: Director, Rehabilitation and Maintenance

Dear Sir/Madam:

Please proceed with the establishment of a Dispute Review Panel for:

A) Service Area: \_\_\_\_\_ Region: \_\_\_\_\_

B) Nature of dispute (Include reference to the applicable Articles, Sections, or Subsections of the Highway Maintenance Agreement (including any Schedules thereto) that are in dispute) (use additional sheets if necessary):

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

C) Proposed resolution (use additional sheets if necessary):

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

D) Contractor contact for this dispute:

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

Address: \_\_\_\_\_

Phone No: \_\_\_\_\_

E) District Manager for this Service Area:

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

Address: \_\_\_\_\_

Phone No: \_\_\_\_\_

F) We acknowledge having received and read a copy of the Dispute of Resolution Protocol and agree to abide by its terms and conditions.

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Contractor Name

"FORM B"

The Secretary  
Dispute Resolution Panel  
Ministry of Transportation and Infrastructure  
P.O. Box 9850 Stn Prov Govt  
Victoria, British Columbia  
V8W 9T5  
Attn: Director, Rehabilitation and Maintenance

Dear Sir/Madam:

RE: Dispute  
Service Area \_\_\_\_\_

The Province's position on the dispute is the following:

A) Nature of dispute (Include reference to the applicable Articles, Sections, or Subsections of the Highway Maintenance Agreement (including any Schedules thereto) that are in dispute) (use additional sheets if necessary):

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B) Province's position on the dispute: (use additional sheets if necessary):

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C) Proposed resolution (use additional sheets if necessary):

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D) Regional Director for this Service Area:

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

Address: \_\_\_\_\_

Phone No: \_\_\_\_\_