

Dispute Board Agreement (Rev: December 19, 2019)

Note to Specifiers: This generic agreement may not be entirely applicable or enforceable in certain jurisdictions.

Dispute Review Board Agreement

I PARTIES

- A. _____, herein after referred to as the Owner.
- B. _____, herein after referred to as the Contractor.
- C. Dispute Review Board, hereinafter referred to as the DRB, consisting of three members:
 - 1. _____
 - 2. _____
 - 3. _____

II CONTRACT

- A. The Contractor has entered into a Contract with the Owner for the construction of the _____ [Project Name], hereinafter referred to as the Project.
- B. Section XXXX [the Project’s DRB specification] is incorporated by reference into this agreement, and the Contractor, Owner, and DRB are bound to the duties and responsibilities set forth therein.

III PURPOSE OF DRB

Engage in dispute avoidance activities, which include fostering and conducting proactive discussion on project issues via attendance at DRB regular meetings, site visits, and advisory opinions. Engage in dispute resolution activities, which include the timely and impartial resolution of disputes by a hearing process.

IV DRB SCOPE OF WORK

- A. General:
 - 1. Stay abreast of Project developments and existing or potential disputes by means of periodic meetings, site visits, job documents, and other means as agreed by the Parties.
 - 2. Examine site conditions or specific construction features relating to an existing or potential dispute, unless such examination is not practical, or, in the judgment of either the Owner or the Contractor, would result in a delay to the Project.
 - 3. One of the selected members shall serve as Chair.
- C. Establish DRB Operating Procedures consistent with the requirements and general guidelines set forth in Section XXXX [DRB SPECIFICATIONS].
- D. Dispute Avoidance Activities:
 - 1. Commit to be reasonably available and to avoid conflict with other commitments on days scheduled for DRB regular meetings.

2. Prepare agendas for and summaries of DRB regular meetings.
 3. Review project documents provided in advance of meetings.
 4. Provide Advisory Opinions as requested by both Parties.
- E. Dispute Resolution Activities:
1. Upon receipt by the DRB of a dispute referral from either the Owner or Contractor, plan, schedule and conduct a hearing process in the manner, timing, and location set by the DRB following consultation with the Parties.
 2. Convene internal meetings as needed to review and discuss the dispute, and to formulate the report.
 3. Following each hearing and DRB deliberation, issue timely written reports to the Owner and the Contractor, including the supporting rationale for all recommendations.
 4. When requested and deemed appropriate by the DRB, provide executed written responses to requests for clarification made by either the Owner or the Contractor
- F. Perform services and assume responsibilities, as agreed to by the Parties, as may be required, including those necessary but not listed herein, to achieve the purpose of this Agreement.

V RESPONSIBILITIES OF THE PARTIES

- A. DRB Responsibilities:
1. Maintain impartiality and avoid conflicts of interest by continuing to meet the eligibility and disclosure requirements for DRB members, as set forth in the contract documents. Promptly advise all Parties upon becoming aware of any development that could be perceived as a conflict of interest.
 2. Advise the other DRB members and the Owner and the Contractor when unable to continue serving as a DRB member.
 3. Neither the DRB Members individually, nor the DRB collectively shall:
 - a. Give advice regarding design or construction means or methods.
 - b. Discuss, individually or collectively, issues with the Owner or the Contractor, such as the conduct of the work and the resolution of construction problems, that could possibly be construed as compromising the DRB's ability to impartially resolve future disputes.
 - c. Express an individual or collective opinion of merit, in whole or in part, for any potential or other dispute at any time prior to the issuance of a report, except in the case of an Advisory Opinion.
 - d. Meet or communicate with either the Owner or Contractor in the absence of the other, except as required when performing the duties of the Chair or conducting a meeting or hearing which the Owner or Contractor refuses to attend.
 4. Consider the facts and circumstances forming the basis of a referred dispute impartially and independently, and evaluate the merits based on careful consideration of all contract requirements, applicable law, and regulations. The DRB shall not:

- a. Undermine the provisions of the contract, disregard or alter any requirements of the contract, or alter the allocation of risk specified therein.
 - b. Supplant or otherwise interfere with the respective rights, authority, duties, and obligations of either the Owner or Contractor as set forth in the contract documents.
 - c. Participate in negotiations with the Parties, nor perform conciliation or mediation services in connection with any issue or dispute.
5. Make every effort to reach unanimous recommendations. If this cannot be accomplished, include written minority recommendations and supporting rationale within the full DRB report, but do not identify the dissenting member.
 6. DRB members individually, and the DRB collectively, agree to be bound by the DRB Foundation Code of Ethical Conduct as set forth in the current edition of the DRBF Practices and Procedures Manual.

B. Owner Responsibilities:

1. Except for participation in the DRB's activities as provided in the contract documents and this Agreement, do not solicit advice or consultation from the DRB or individual DRB members on matters dealing with the conduct of the work or resolution of problems.
2. Furnish to each DRB member one copy of the conformed contract documents, the baseline schedule and agreed updates, Contract amendments and other documents pertinent to the performance of the contract and necessary for the DRB to conduct its operations.
3. Coordinate DRB operations in cooperation with the Contractor.
4. Arrange for or provide facilities at or near the site for periodic meetings, and provide copying services.
5. Cooperate with the Contractor and the DRB to facilitate avoidance of disputes and to promote the timely and impartial resolution of disputes.

C. Contractor Responsibilities:

1. Except for participation in the DRB's activities as provided in the contract documents and this Agreement, do not solicit advice or consultation from the DRB or individual DRB members on matters dealing with the conduct of the work or resolution of problems.
2. Furnish to each DRB member and to the Owner, one copy of pertinent documents other than those furnished by the Owner as may be requested.
3. Cooperate with the Owner and the DRB to facilitate avoidance of disputes and to promote the timely and impartial resolution of disputes.

VI TIME FOR BEGINNING AND COMPLETION OF DRB ACTIVITIES

- A. Unless the DRB Chair has been previously identified by the Parties, the DRB shall begin its activities by selecting the Chair. After selection of the Chair, DRB activities shall

proceed with preparation for the first meeting, including preparation of the DRB Operating Procedures.

Note to Specifiers: The preceding provision assumes that the joint selection process is used.

- B. This Agreement shall survive the termination, resignation or death of any DRB member.
- C. The DRB's jurisdiction under this Agreement shall terminate on the date of final payment under the Contract, unless terminated earlier by mutual agreement of the Owner and the Contractor.
- D. Individual DB members may be terminated by mutual agreement of the Owner and Contractor, as provided in Section __ of the DRB Specification.
- E. In the event a DRB member is terminated, he/she shall be compensated for services performed up to the effective date of the termination.
- F. In the event a DRB resigns, he/shall give the Parties at least thirty (30) days written notice, shall be compensated for services up to the effective date of the resignation, and shall cooperate with the Parties in transitioning off the DRB.

VII PAYMENT

- A. Payments made to the DRB members shall constitute full compensation for work performed, travel time, services rendered, and for all materials, supplies and incidentals necessary to serve on the DRB.
- B. Payment for services rendered by DRB members shall be at the individual rate and conditions agreed to with each DRB member.
- C. DRB members shall be reimbursed for actual direct, non-fee expenses, subject to limitations imposed by the Parties.
- D. Payment made to DRB members in the form of bonus, commission, or consideration of any nature other than that specified hereinabove for performance and service provided under this Agreement, before, during or after the period that this Agreement is in effect, is prohibited.
- E. DRB members shall individually submit invoices for work completed to the Contractor:
 - 1. Not more often than once per month.
 - 2. Based on the agreed billing rates and conditions and on the number of hours expended, together with direct, non-fee expenses including an itemized listing supported by copies of original bills, invoices, and expense accounts.
 - 3. Accompanied by a description of activities performed daily during that period.
- F. The Contractor shall pay acceptable invoices within thirty (30) days of their receipt.
- G. The Contractor shall be reimbursed for the Owner's portion of the DRB costs in accordance with payment provisions specified in the Contract.

VIII CONFIDENTIALITY AND RECORDKEEPING

- A. No DRB member shall divulge information identified as confidential that has been acquired during DRB activities without obtaining prior written approval from the Owner and the Contractor.

- B. DRB members shall maintain cost records pertaining to this Agreement for inspection by the Owner or the Contractor for a period of [X] years following termination of this Agreement.

Note to Specifiers: Insert number of years of the Project jurisdiction's record retention requirement.

IX ASSIGNMENT

No Party to this Agreement shall assign any duty established under this Agreement.

X. TERMINATION

- A. This Agreement may be terminated by mutual agreement of the Owner and Contractor at any time upon not less than four (4) weeks written notice to the other Parties.
- B. If a DRB member resigns, is unable to serve, or is terminated he or she shall be replaced within thirty (30) days in the same manner as he or she was originally selected. This Agreement shall be amended to indicate the member replacement.

XI LEGAL RELATIONS

- A. The Parties to this Agreement expressly acknowledge that each DRB member, in the performance of his or her duties on the DRB, is acting in the capacity of an independent agent and not as an employee of the Owner or the Contractor.
- B. The Owner and the Contractor acknowledge that each DRB member is acting in a capacity intended to assist the Parties in avoiding disputes or facilitating the timely resolution of disputes. Accordingly, it is agreed and acknowledged that, to the fullest extent permitted by law, each DRB member shall be accorded quasi-judicial immunity for any actions or decisions associated with DRB activities.
- C. Each DRB member shall be held harmless for any personal or professional liability arising from or related to DRB activities. To the fullest extent permitted by law, the Owner and the Contractor shall indemnify and hold harmless each DRB member for claims, losses, demands, costs, and damages (including reasonable attorney fees) for bodily injury, property damage, or economic loss arising out of or related to DRB members carrying out DRB activities. The foregoing indemnity is a joint and several obligation.

XII DISPUTES REGARDING THIS THREE-PARTY AGREEMENT

- A. Disputes among the Parties arising out of this Agreement that cannot be resolved by negotiation and mutual concurrence and actions to enforce any right or obligation under this Agreement shall be initiated in the _____ [Court Name] Court of the _____ [Jurisdiction].
- B. All questions shall be resolved by application of _____ [Jurisdiction] law.
- C. The DRB members hereby consent to the personal jurisdiction of the Court of the _____ [Jurisdiction].

XIII FUNDING AGENCY REVIEW

The _____ [Agency funding the Project] has the right to review DRB reports and to attend DRB hearings, but not to attend private DRB deliberations.

XV DRB AGREEMENT EFFECTIVE DATE

This Agreement shall be effective as of the following date: [Insert date DRB was appointed]:

DRB MEMBERS

By: _____
(Signature)

(Name)

By: _____
(Signature)

(Name)

By: _____
(Signature)

(Name)

Contractor

Owner

By: _____
(Signature)

By: _____
(Signature)

By: _____
(Name)

By: _____
(Name)

Title: _____

Title: _____