DRBF Model Dispute Resolution Advisor Agreement (BOD Approved 19 February 2021; Updated 4 June 2021)

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

Dispute Resolution Advisor Agreement

1. PARTIES

   1.1. _____ ("Owner").

   1.2. _____("Contractor").

   1.3 _____("DRA").

2. CONTRACT

   2.1. The Contractor has entered into a contract dated [XX] ("Contract") with the Owner for the construction of _____ [Project Name] ("Project").

   2.2. Section [XX] of the Contract (hereinafter referred to as "DRA Specification") is incorporated by reference into this Agreement, and the Owner, the Contractor, and the DRA shall be bound to the duties and responsibilities set forth therein. To the extent there is a discrepancy between this Agreement and the DRB Specification, the DRB Specification shall govern.

3. PURPOSE OF DRA

   Engage in dispute avoidance activities, which include fostering and conducting proactive discussion on project issues via attending DRA regular meetings, participating in site visits, and giving advisory opinions (if requested by both the Owner and the Contractor). Engage in dispute resolution activities, which include issuing timely and impartial recommendations for resolution of disputes by a DRA hearing process.

4. DRA SCOPE OF WORK

   4.1. General:

      4.1.1. Stay abreast of Project developments and potential or existing disputes by means of periodic meetings, site visits, job document reviews, and other means as agreed by the Parties.

      4.1.2. Examine site conditions or specific construction features relating to potential or existing disputes, unless such examination is not practical or would result in a delay to the Project.

   4.2. Establish DRA Operating Procedures that supplement and are consistent with the requirements and general guidelines set forth in the DRA Specification.

   4.3. Dispute Avoidance Activities:

      4.3.1. Commit to be reasonably available and to avoid conflicts with other commitments on days scheduled for DRB regular meetings and site visits.

4.3.2. Prepare agendas for and summaries of DRB regular meetings.

4.3.3. Review project documents provided in between or in advance of meetings.

4.3.4. Provide advisory opinions as requested by both the Owner and the Contractor.

4.4. Dispute Resolution Activities:

4.4.1. Upon receipt by the DRB of a dispute referral from either the Owner or Contractor, plan, schedule and conduct a DRB hearing process in the manner, timing, and location set by the DRB, in consultation with the Owner and the Contractor.

4.4.2. Convene internal meetings as needed to review and discuss the dispute, and to formulate the report.

4.4.3. Following each hearing and DRB deliberation, issue timely written reports to the Owner and the Contractor, including the supporting analysis and rationale for all recommendations.

4.4.4. When requested and deemed appropriate by the DRB, provide timely written responses to requests for clarification made by either the Owner or the Contractor

4.5. Perform any other DRB services needed to achieve the purpose of this Agreement.

5. RESPONSIBILITIES OF THE PARTIES

5.1. DRA Responsibilities:

5.1.1. Maintain impartiality and avoid conflicts of interest by continuing to meet the eligibility and disclosure requirements for DRAs, as set forth in the DRA Specification. Promptly advise the Owner and the Contractor upon becoming aware of any development that could be perceived as a conflict of interest and promptly resolve any such issues.

5.1.2. Advise the other DRA members and the Owner and the Contractor when unable to continue serving as a DRA member.

5.1.3. The DRA shall not:

5.1.3.1. Give advice regarding design or construction means or methods.

5.1.3.2. Discuss 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 DRA's ability to impartially resolve future disputes.

5.1.3.3. Express an 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.

5.1.3.4. Meet or communicate with either the Owner or the Contractor in the absence of the other, except as required when conducting a meeting or hearing which the Owner or Contractor refuses to attend.

5.1.4. Consider the facts and circumstances forming the basis of a referred dispute impartially and independently, and evaluate the merits based on careful consideration of the information submitted by the Parties, all Contract requirements, and applicable law/regulations. The DRA shall not:

5.1.4.1. Undermine the provisions of the Contract, disregard or alter any requirements of the Contract, or alter the allocation of risk specified therein.

5.1.4.2. Supplant or otherwise interfere with the respective rights, authority, duties, and obligations of either the Owner or Contractor as set forth in the Contract or Contract Documents, as defined in the Contract.

5.1.4.3. Participate in negotiations with the Owner and Contractor, nor perform conciliation or mediation services in connection with any issue or dispute.

5.1.5. The DRA agrees to be bound by the DRA Foundation Code of Ethical Conduct as set forth in the current edition of the DRBF *Dispute Board Manual: A Guide to Best Practices and Procedures*.

5.2. Owner Responsibilities:

5.2.1. Except for participation in the DRA's activities as provided in the DRA Specification and this Agreement, do not solicit advice or consultation from the DRA on matters dealing with the conduct of the work or resolution of problems.

5.2.2. Furnish to the DRA one copy of the conformed Contract (including all Contract Documents), the baseline schedule and agreed updates, Contract amendments, and other documents pertinent to the performance of the Contract and necessary for the DRA to conduct its operations.

5.2.3. Coordinate DRA operations in cooperation with the Contractor.

5.2.4. Arrange for or provide facilities at or near the site for periodic meetings, and provide any necessary support services.

5.2.5. Cooperate with the Contractor and the DRA to encourage avoidance of disputes and facilitate timely resolution of disputes.

5.3. Contractor Responsibilities:

5.3.1. Except for participation in the DRA's activities as provided in the Contract and this Agreement, do not solicit advice or consultation from the DRA on matters dealing with the conduct of the work or resolution of problems.

5.3.2. Furnish to the DRA and to the Owner one copy of pertinent documents, other than those furnished by the Owner, as may be requested.

5.3.3. Cooperate with the Owner and the DRA to encourage avoidance of disputes and facilitate timely resolution of disputes.

6. TIME FOR BEGINNING AND COMPLETION OF DRA ACTIVITIES

6.1. Upon appointment, DRA activities shall proceed with preparation for the DRA kick-off meeting, including preparation of the DRA Operating Procedures.

6.2. This Agreement shall survive the termination, resignation or death of the DRA.

6.3. The DRA'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.

6.4. The DRA may be terminated by mutual agreement of the Owner and Contractor, as provided in Section [XX] of the DRA Specification. If during the course of the DRA's tenure the Owner

and/or the Contractor has any issues or concerns with the DRA, the requesting Party shall confer with the other Party and, as needed, with the DRA to address any such issues or concerns to endeavor to avoid termination.

6.5. In the event the DRA is terminated, the DRA shall be compensated for services performed up to the effective date of the termination.

6.6. In the event the DRA resigns, the DRA shall give the Parties at least thirty (30) days written notice to both Parties; shall be compensated for services up to the effective date of the resignation; and shall cooperate with the Owner and the Contractor in transitioning to the replacement DRA.

7. PAYMENT

7.1. Payments made to the DRA shall constitute full compensation for work performed, travel time, services rendered, and for all materials, supplies and incidentals necessary to serve as the DRA.

7.2. Payment for services rendered by the DRA shall be at the rate and conditions agreed to with the Owner and the Contractor.

7.3. The DRA shall be reimbursed for actual direct, non-fee expenses, subject to limitations imposed by the Parties.

7.4. Payment made to the DRA 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.

7.5. The DRA shall submit invoices for work completed to the Contractor:

7.5.1. Not more often than once per month.

7.5.2. Based on the agreed billing rates and conditions and on the number of hours expended, together with direct, non-fee expenses as permitted by any applicable reimbursement limitations (including an itemized listing supported by copies of original bills, invoices, and expense accounts).

7.5.3. Accompanied by a description of activities performed daily during the invoice period.

7.6. The Contractor shall pay acceptable invoices within thirty (30) days of their receipt.

7.7. The Contractor shall be reimbursed for the Owner's portion of the DRA costs in accordance with payment provisions specified in the Contract.

8. CONFIDENTIALITY AND RECORDKEEPING

8.1. The DRA shall not divulge information that has been acquired during DRA activities without obtaining prior written approval from the Owner and the Contractor.

8.2. The DRA 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.

9. ASSIGNMENT

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

10. TERMINATION

10.1. This Agreement may be terminated by mutual agreement of the Owner and Contractor at any time upon not less than thirty (30) days written notice to the DRA.

10.2. If a DRA member resigns, is unable to serve, or is terminated, the DRA shall be replaced within thirty (30) days in the same manner the DRA was originally selected.

11. LEGAL RELATIONS

11.1. The Parties to this Agreement expressly acknowledge that the DRA, in the performance of duties as the DRA, is acting in the capacity of an independent agent and not as an employee of the Owner or the Contractor.

11.2. The Owner and the Contractor acknowledge that the DRA 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, the DRA shall be accorded quasi-judicial immunity for any actions or recommendations associated with DRA activities.

11.3. To the fullest extent permitted by law, the Owner and the Contractor shall indemnify and hold harmless the DRA from (i) any personal or professional liability arising from or related to DRA activities under this Agreement, and (ii) any claims, losses, demands, costs, and damages (including reasonable attorney fees) for bodily injury, property damage, or economic loss arising out of or related to the DRA carrying out DRA activities under this Agreement. The foregoing indemnity and hold harmless agreement is a joint and several obligation.

12. DISPUTES REGARDING THIS AGREEMENT

12.1. Disputes among the Parties arising out of this Agreement that cannot be resolved by negotiation, and actions to enforce any right or obligation under this Agreement, shall be initiated in the _____ [Court Name] Court of the _____ [Jurisdiction].

12.2. All questions shall be resolved by application of _____ [Jurisdiction] law, without reference to the jurisdiction's choice of law rules.

12.3. The DRA hereby consent to the personal jurisdiction of the Court of the _____ [Jurisdiction].

13. FUNDING AGENCY REVIEW

The _____ [Agency funding the Project] has the right to attend DRA regular meetings, review DRA reports, and attend DRA hearings.

14. DRA AGREEMENT EFFECTIVE DATE

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

Dispute Resolution Advisor

By: _____ _____
(Signature) (Name)

Contractor Owner

By: _____ By: _____
(Signature) (Signature)

By: _____ By: _____
(Name) (Name)

Title: _____ Title: _____