# DRBF Model DRA Agreement (2023 Update/BOD Approved April 2023)

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

#### **Dispute Resolution Advisor Agreement**

## PARTIES

* 1. [FILL IN NAME] (“Owner”).
  2. [FILL IN NAME] (“Contractor”).

1.3. [FILL IN NAME] Dispute Resolution Advisor (“DRA”)

## CONTRACT

* 1. The Contractor has entered into a contract dated [XX] (“Contract”) with the Owner for the construction of [PROJECT NAME] (“Project”).
  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 DRA Specification, the DRA Specification shall govern.

## PURPOSES OF DRA

3.1. 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, as jointly requested by the Parties, providing informal assistance or advisory opinions.

3.2. Engage in dispute resolution activities, which include promptly holding a hearing for formal disputes and issuing timely recommendations for resolution of such disputes.

## DRA SCOPE OF WORK

* 1. General:
     1. Stay abreast of Project developments and potential or existing disputes by means of periodic meetings, site visits, Project document reviews, and other means as agreed by the Parties.
     2. Examine site conditions or specific construction features relating to potential or existing disputes.
  2. Establish DRA Operating Procedures with process details that are consistent with the requirements and general guidelines set forth in the DRA Specification. In formulating and administering Operating Procedures the DRA shall include reasonable steps to make the DRA process as effective and efficient as practicable.
  3. Dispute Avoidance Activities:
     1. Commit to be reasonably available and to avoid conflicts with other commitments on days scheduled for DRA regular meetings and site visits.
     2. Prepare agendas for and summaries of DRA regular meetings.
     3. Review project documents provided in between and in advance of meetings.
     4. Prepare for project meetings and site visits sufficiently to substantively discuss with the Project team the specified agenda topics.
     5. Provide informal assistance or advisory opinions as requested by both the Owner and the Contractor.
  4. Dispute Resolution Activities:
     1. Upon receipt by the DRA of a dispute referral from either the Owner or Contractor, and in consultation with the Owner and Contractor, plan, schedule and conduct an effective and efficient DRA hearing process in the manner, timing, and location set by the DRA.
     2. Convene internal meetings as needed to review and analyze the dispute, and to formulate the report.
     3. Following each hearing and DRA deliberation, issue a timely written report to the Owner and the Contractor, including the supporting analysis and rationale for any recommendation.
     4. Provide timely responses to requests for clarification or for an informal de-brief.

4.5. Perform any other DRA services as needed to achieve the purposes of this Agreement.

## RESPONSIBILITIES OF THE PARTIES

* 1. DRA Responsibilities:
     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 all Parties upon becoming aware of any development that could be perceived as a conflict of interest and promptly resolve any such issues.
     2. Advise the Owner and the Contractor when unable to continue serving as a DRA member.
     3. The DRA shall not:
        1. Give advice regarding design or construction means or methods.
        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.
        3. 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 informal assistance or an advisory opinion.
        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.
     4. The DRA shall consider the facts and circumstances forming the basis of a referred dispute independently and impartially, and evaluate the merits based on careful consideration of the information submitted by the Parties, all Contract requirements, and applicable law/regulations. In doing so, the DRA shall not:
        1. Ignore or undermine the provisions of the Contract, disregard or alter any requirements of the Contract, or alter the allocation of risk specified therein.
        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).
        3. Participate in negotiations with the Owner and Contractor, nor perform conciliation or mediation services in connection with any issue or dispute.
     5. The DRA agrees to be bound by the Dispute Resolution Board Foundation’s Code of Ethical Conduct as set forth in the current edition of the DRAF’s *Dispute Board Manual: A Guide to Best Practices and Procedures*.
  2. Owner Responsibilities:
     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.
     2. Furnish, or request the Contractor to furnish, to the DRA (1) a copy of the conformed Contract (including all Contract Documents) and the baseline schedule and agreed updates, and (2) other documents necessary for the DRA to conduct his/her operations. Such other documents shall be regularly furnished or made available to the DRA in between and in advance of regular meetings.
     3. Coordinate DRA operations in cooperation with the Contractor.
     4. Arrange for or provide facilities at or near the site for periodic meetings, and provide any necessary support services.
     5. Cooperate with the Contractor and the DRA to encourage avoidance of disputes and facilitate timely resolution of disputes.
  3. Contractor Responsibilities:
     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.
     2. Furnish to the DRA and to the Owner copies of pertinent documents, other than those furnished by the Owner, as may be requested.
     3. Cooperate with the Owner and the DRA to encourage avoidance of disputes and facilitate timely resolution of disputes.

## TIME FOR BEGINNING AND COMPLETION OF DRA ACTIVITIES

* 1. The DRA shall begin his/her service under this Agreement upon receipt of notice of appointment by the Parties. DRA activities shall commence with preparation for the DRA kick-off meeting, including preparation of the DRA Operating Procedures.
  2. This Agreement shall survive the termination, resignation or death of the DRA.
  3. The DRA’s jurisdiction under this Agreement shall terminate on the date of final payment under the Contract, unless terminated earlier pursuant to Section 6.4.
  4. Upon thirty (30) days notice, the DRA members may be terminated by mutual agreement of the Owner and Contractor, as provided in Section [XX] of the DRA Specification
  5. In the event a DRA is terminated, the DRA shall be compensated for services performed up to the effective date of the termination.
  6. In the event a DRA resigns, the member shall give 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 off the project.

## PAYMENT

*Note to Specifiers: This payment provision should be modified to reflect the allowable rates, travel time compensation, allowable expenses, etc., as contemplated by the DRA Specification. Specific terms for compensation and expense reimbursement should be filled in in the blanks set forth below.*

* 1. Compensation for services rendered by the DRA shall be as follows: [FILL IN DETAILS].
  2. Reimbursement of the DRA’s expenses shall be as follows: [FILL IN DETAILS].
  3. Payments made to the DRA shall constitute full compensation for services rendered, work performed, travel time, and all expenses, materials, and incidentals necessary to serve as the DRA.
  4. No payment shall be made to the DRA in the form of bonus, commission, or consideration of any nature other than that specified for performance and service provided under this Agreement.
  5. The DRA members shall submit invoices for work completed to the Contractor:
     1. Not more often than once per month.
     2. Based on the agreed compensation rates and expense reimbursement guidelines as set forth herein.
     3. Accompanied by a description of activities performed during the invoice period, and an itemization of allowable expenses incurred (together with copies of original bills, receipts, and other expense back-up).
  6. The Contractor shall pay acceptable invoices within thirty (30) days of their receipt.
  7. The Contractor shall be reimbursed for the Owner’s portion of the DRA costs in accordance with payment provisions specified in the Contract.

## CONFIDENTIALITY AND RECORDKEEPING

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

* 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.
  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.

## ASSIGNMENT

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

## TERMINATION/REPLACEMENT

* 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.
  2. If a DRA resigns, is unable to serve, or is terminated, the DRA shall be replaced within thirty (30) days in the same manner the member was originally selected. This Agreement shall be amended to indicate the DRA replacement.

## LEGAL RELATIONS

* 1. The Owner and the Contractor acknowledge that the DRA, in the performance of his/her duties, is acting in the capacity of an independent agent and not as an employee of the Owner or the Contractor.
  2. The Owner and the Contractor acknowledge that the DRA is acting in a capacity intended to assist the Parties in avoiding disputes or facilitating the timely resolution of disputes. Accordingly, the Owner and Contractor agree and acknowledge 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, and shall not be required to participate, appear or testify in any other legal proceedings between the Parties.
  3. To the fullest extent permitted by law, the Owner and the Contractor shall indemnify and hold harmless the DRA member 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 of the Owner and the Contractor.

## DISPUTES REGARDING THIS AGREEMENT

* 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].
  2. All questions shall be resolved by application of [JURISDICTION] law, without reference to the jurisdiction’s choice of law rules.
  3. The DRA hereby consents to the personal jurisdiction of the Court of the [JURISDICTION].

## FUNDING AGENCY REVIEW

13.1. The [AGENCY FUNDING THE PROJECT] has the right to attend DRA regular meetings and site visits and DRA hearings.

## DRA AGREEMENT EFFECTIVE DATE

This Agreement shall be effective as of the following date: [INSERT DATE DRA WAS APPOINTED].

**DRA**

By:

(Signature) (Name)

**CONTRACTOR OWNER**

By: By:

(Signature) (Signature)

By: By:

(Name) (Name)

Title: Title: