



CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC
Specializing in Mediation & Arbitration

PO Box 8029
Santa Fe, NM 87504

New Mexico: 505-473-7733
Fax Phone: 505-474-9061

Out of State: 888-930-0011
Email: cdrs@cdrsllc.com

Website: www.constructiondisputes-cdrs.com

DISPUTE REVIEW BOARD AGREEMENT

WITH FINAL AND BINDING DISPUTE RESOLUTION AUTHORITY

PARTIES

OWNER (Owner) _____

ADDRESS _____

PRIME CONTRACTOR (Contractor) _____

ADDRESS _____

GENERAL PROJECT INFORMATION

PROJECT NAME (Project) _____

LOCATION _____

DISPUTE REVIEW BOARD AUTHORITY

The Parties to this "Dispute Review Board Agreement" (Agreement) do hereby establish a Dispute Review Board (DRB) to function as an advisory board to the Owner and the Contractor for construction related matters concerning the above-mentioned Project. The Owner and Contractor hereby acknowledge that the DRB shall also have the power and authority to render final and binding decisions on Project related disputes between the Owner and Contractor if they find that they cannot come to agreement on any disputes that come before them.

DRB SCOPE

The DRB shall be provided with a full set of construction plans, contract documents, change orders, addendums and all other appropriate materials for them to be completely familiar with every aspect of the Project. Through these documents, updates by the parties to this Agreement and periodic jobsite visits, the DRB should be up-to-date and remain informed on the developments and progress of the project. The duties and responsibilities of the DRB shall include but not be limited to the following:

1. To establish the rules and procedures (rules), or to modify the rules as required, to enable the DRB to carry out its duties and/or responsibilities as set forth within this Agreement.
2. To review the progress of the Project and try to anticipate any future problems that might arise from the information that is before the DRB.
3. To aid the Parties in making decisions to insure that the Project will continue with a minimal amount of lost time while trying to remain within budget.
4. To meet as often as required and/or requested by the Parties to this Agreement. The DRB shall have the authority to schedule meetings and hearings that it feels are appropriate to handle the issues and disputes that are or will become the responsibility of the DRB. The DRB shall make an effort to accommodate the available times of the Parties to this Agreement.
5. To issue written advisory opinions and/or recommendations, in a timely manner, as requested by either Party to this Agreement or as the DRB feels appropriate in carrying out its duties and responsibilities to the Parties to this Agreement.
6. To make recommendations to the Parties on changes to the procedures being utilized by the Parties to the Project.
7. To conduct a Mediation and Arbitration Procedure (Med-Arb) to settle any unresolved disputes between the Parties according to the Rules and Procedures of Construction Dispute Resolution Services, LLC (CDRS) and the Rules and Procedures as specified elsewhere in the Agreement.
8. To schedule a hearing(s) as required in order to handle any unresolved disputes between the Parties. The location, date and time of the hearing(s) shall be established by the DRB after consultation with the Parties to this Agreement.
9. To make periodic jobsite visits as scheduled or required to effectively handle the advisory or decision-making responsibilities of the DRB.
10. To engage the services of an outside specialist(s) or outside consultant(s) as the DRB requires in order to assist them in carrying out their duties and responsibilities.

DRB COMPOSITION

The DRB shall consist of five members, three of which shall be neutral members, one Owner's Representative (Rep) and one Contractor's Representative or Project Supervisor (Super). All five members shall participate in the discussion of any issues that come before the DRB and in the issuance of any written advisory opinions or recommendations from the DRB. Only the neutral DRB members may vote on any final and binding decisions that are requested on unresolved disputes between the Parties to this Agreement. The three neutral members of the DRB, at the direction of the Chair, shall be empowered to meet privately during discussions or deliberations concerning any disputes that come before them. The primary role of the Rep and Super is to provide the neutral DRB members with the information that the DRB requires to issue an advisory opinion, recommendation or to render a final and binding decision to the Parties in the settlement of an unresolved dispute.

OWNER'S RESPONSIBILITIES

The Owner's responsibilities shall include but not be limited to the following:

1. Select one neutral member to serve on the DRB.
2. Provide a Rep to serve on the DRB.
3. Work with the Contractor in jointly selecting one neutral member of the DRB to serve as the Chair of the DRB.
4. Provide, along with the cooperation of the Contractor, all construction plans, contract documents, change orders, addendums and all other appropriate materials for the DRB to be completely familiar with every aspect of the Project.
5. Make every effort to settle disputes related to the Project with the Contractor both prior to the involvement of the DRB and after the involvement of the DRB, based on their written advisory opinion.
6. Never privately consult with or discuss any issues that are within the scope of the DRB with any neutral member of the DRB.
7. Help facilitate and/or arrange the DRB meetings and jobsite visits of the DRB.
8. Provide any ancillary assistance to the DRB including but not limited to: providing a location for DRB meetings, providing clerical services as requested by the DRB, providing transportation for the DRB members, providing protective gear and apparel as required by the DRB during jobsite visitations and any other applicable assistance that the Owner is able to provide for the convenience and comfort of the DRB. All of the above shall be provided to the DRB according to the financial terms as specified in the Fees and Related Costs Addendum to this Agreement.
9. Provide timely payments to the DRB members in accordance with the fees, related costs and terms of payment as specified in the Fees and Related Costs Addendum to this Agreement.

CONTRACTOR'S RESPONSIBILITIES

The Contractor's responsibilities shall include but not be limited to the following:

1. Select one neutral member to serve on the DRB.
2. Provide a Super to serve on the DRB.
3. Work with the Owner in jointly selecting one neutral member of the DRB to serve as the Chair of the DRB.
4. Provide, along with the cooperation of the Owner, all construction plans, contract documents, change orders, addendums and all other appropriate materials for the DRB to be completely familiar with every aspect of the Project.
5. Make every effort to settle disputes related to the Project with the Owner both prior to the involvement of the DRB and after the involvement of the DRB, based on their written advisory opinions or recommendations.
6. Never privately consult with or discuss any issues that are within the scope of the DRB with any neutral member of the DRB.
7. Help facilitate and/or arrange the meetings and jobsite visits of the DRB.
8. Provide a safe environment on the jobsite during jobsite visitations by the DRB.
9. Provide any ancillary assistance to the DRB including but not limited to: providing a location for DRB meetings, providing clerical services as requested by the DRB, providing transportation for the DRB members, providing protective gear and apparel as required by the DRB during jobsite visitations and any other applicable assistance that the Contractor is able to provide for the convenience, comfort and safety of the DRB members. All of the above shall be provided to the DRB according to the financial terms as specified in the Fees and Related Costs Addendum to this Agreement.
10. Provide timely payments to the DRB members in accordance with the fees, related costs and terms of payment as specified in the Fees and Related Costs Addendum to this Agreement.

DRB NEUTRAL MEMBER'S RESPONSIBILITIES

The DRB neutral member's responsibilities shall include but not be limited to the following:

1. To remain neutral and independent from the Parties to this Agreement until the termination or completion of the Project.
2. To keep confidential the privileged information and details of the Project unless written permission is obtained from the Parties allowing the DRB member to share the confidential information with outside parties.
3. To make every attempt to avoid conflicts of interest and to immediately disclose any and all possible conflicts of interest that might be construed by the Parties as affecting the DRB member's neutrality and independence.
4. To make every attempt to meet the time requirements that are necessary in the performance of their duties and responsibilities as a member of the DRB.
5. To make every effort to be available on short notice to attend a non-scheduled meeting of the DRB at the request of the Parties or at the request of the DRB Chair.
6. To continuously review and become familiar with all of the new materials submitted by the Parties to the DRB concerning the Project.

7. To be courteous and understanding to the wishes and requests of the Parties to this Agreement.
8. To carefully review all of the facts, circumstances and conditions surrounding the issues that are brought before the DRB for consideration.
9. To issue written advisory opinions and recommendations keeping in mind the goals and objectives of the Parties to this Agreement, and to render final and binding decisions, to settle unresolved disputes at the request of the Parties that are both fair and equitable.
10. To keep detailed records of any and all costs in relation to being a DRB member.
11. To make every effort to minimize the costs of travel and other related DRB expenses.

DRB REP'S AND SUPER'S RESPONSIBILITIES

The DRB Rep's and Super's responsibilities shall include but not be limited to the following:

1. To keep confidential the privileged information and details concerning the work of the DRB unless they receive written permission from the Parties allowing the DRB member to share the confidential information with outside parties.
2. To make every attempt to meet the time requirements that are necessary in the performance of their duties and responsibilities as a member of the DRB.
3. To make every effort to be available on short notice to attend a non-scheduled meeting of the DRB at the request of the Parties or at the request of the DRB Chair.
4. To continuously review and become familiar with all of the new materials submitted by the Parties to the DRB concerning the Project.
5. To be courteous and understanding to the wishes and requests of the Parties to this Agreement.
6. To carefully review all of the facts, circumstances and conditions surrounding the issues that are brought before the DRB for consideration.
7. To issue advisory opinions and recommendations keeping in mind the goals and objectives of the Parties to this Agreement.
8. To keep, if applicable, detailed records of any and all costs in relation to being a DRB member.
9. To make every effort to minimize the costs of travel and other related DRB expenses.

DRB VACANCIES

The following rules and procedures concern the retirement, removal and replacement of DRB members:

1. If a neutral DRB member wishes to resign from his/her commitment as a member of the DRB due to illness, conflicts of interest, undue time requirements of the DRB or for any other personal reasons, thirty-day notification shall be given to the Parties unless there are extenuating circumstances surrounding the resignation.
2. A neutral DRB member can be removed from the DRB only with the written agreement of all of the Parties to the Agreement. All monies due and payable to the DRB member at the time of the dismissal shall be paid to the departing DRB member within thirty days of his/her dismissal.

3. The Owner may replace or find a substitute for his/her/its Rep at any time and the Contractor may replace or find a substitute for his/her/its Super at any time as long as a timely notification is given to the DRB Chair and the other Party to the Agreement.
4. If a member is to be replaced, the replacement procedure shall follow the applicable rules and procedures as specified in #1, #2 and #3 of the Owner's or Contractor's Responsibilities section of this agreement. The new member of the DRB shall be provided with the same information and necessary updated information as was provided to the original member of the DRB.
5. If a temporary replacement is required by one or both of the Parties, the same procedures should be followed as specified in #4 in this section with the stipulated duration of the replacement being clearly understood and agreed upon by the Parties to this Agreement and the Chair of the DRB.

DISPUTE RESOLUTION

As specified elsewhere in this Agreement, any disputes that develop between the Parties to this Agreement that cannot be resolved by the Parties, shall be resolved by the DRB through the Med-Arb process. The two neutral non-chair members shall first serve as co-mediators to the Parties to attempt to settle the dispute. If successful, a Mediation Settlement Agreement shall be executed between the Parties. If not successful, the entire three-person neutral DRB shall function as a tripartite arbitration panel and shall conduct an arbitration according to the Rules and Procedures of CDRS with the DRB Chair serving as the chair of the arbitration panel. The majority decision of the arbitration panel shall prevail. The decision of the arbitration panel shall be final and binding upon the Parties and is not subject to appeal.

If after the co-mediation, either Party feels that one or both of the co-mediators was given confidential and/or privileged information that could affect the neutrality of one or both of the co-mediators, the Party or Parties shall notify the DRB Chair and the DRB Administrator, in writing, of their concern and both co-mediators shall be disqualified as arbitrators and the DRB Chair shall then conduct the arbitration as a single arbitrator and his/her decision shall be binding upon the Parties.

DRB FEES AND RELATED COSTS

Dispute Review Board fees and related expenses shall be negotiated on each Project. Fees and related costs will vary according to whether the CDRS Dispute Resolution Specialist(s) is a member of the DRB and/or the Chair of the DRB. The specific construction knowledge and experience required of the CDRS Dispute Resolution Specialist(s) and the geographic location of the Project will also determine the appropriate fees and related costs for the CDRS Dispute Resolution Specialist(s). The fees and costs for this DRB and the method and schedule of payments will be reflected in a separate Fees and Related Costs Addendum to this Agreement.

LEGAL ISSUES AND DRB MEMBER IMMUNITY

By signing this Agreement, the Parties agree to the all of the terms and conditions included within this Agreement and also agree to the following:

1. At no time during or subsequent to the operation of the DRB, shall the Parties or any representative of the Parties, request through any and all means including subpoena, that any neutral DRB member appear in any capacity or be deposed in any legal or administrative procedure concerning the Project. To the extent that the Parties may have a right to call the DRB members as a witness or to be deposed, the Parties do hereby waive that right.
2. The Parties shall not subpoena or demand the production of any records, notes, documents, or any other work product of the DRB in any legal or administrative proceeding concerning the Project. To the extent that the Parties may have the right to request the production of the aforementioned items, the Parties do hereby waive that right.
3. In the event that any of the Parties causes a subpoena to be issued violating the terms of paragraphs 1 and 2 of this section, the responsible Party(s) shall pay the DRB member(s) attorney's fees and related costs incurred to resist the subpoena and enforce the privacy and confidentiality provisions of this Agreement.
4. The Parties to this Agreement acknowledge that the neutral DRB members, in the performance of their duties and responsibilities, are serving as neutral and independent members of the DRB, and in no way represent any of the Parties to this Agreement.
5. As the DRB is acting in the best interest of all of the Parties to this Agreement, no member of the DRB shall be held liable or responsible for the consequences of any advisory opinion, recommendation, final and binding decision or any other action taken by the DRB in the execution of its duties and responsibilities. **EACH DRB MEMBER SHALL BE HELD HARLESS FOR ANY PERSONAL OR PROFESSIONAL LIABILITY ARISING FROM OR RELATED TO DRB ACTIVITIES INCLUDING THE ISSUANCE OF AN ADVISORY OINION. TO THE FULLEST EXTENT PERMITTED BY LAW, THE OWNER(S) AND THE CONTRACTOR OR ANY OTHER PARTY TO THIS AGREEMENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS ALL DRB MEMBERS AND CDRS FOR CLAIMS, LOSSES, DEMANDS, COSTS AND DAMAGES, OR ECONOMIC LOSSES ARISING OUT OF OR RELATED TO DRB MEMBERS CARRYING OUT THEIR RESPONSIBILITIES AS A DRB MEMBER OR FOR ANY OTHER DRB ACTIVITIES RELATED TO THE DRB PROCESS. THE FOREGOING INDEMNITY IS A JOINT AND SEVERABLE OBLIGATION.**
6. The parties to this Agreement, to the maximum extent possible by law, shall defend, hold harmless and indemnify all DRB members in relation to their personal and professional liability in the performance of their duties and responsibilities as members of the DRB.
7. All decisions of the DRB concerning unresolved disputes between the Parties shall be final and binding upon the Parties to this Agreement and are not subject to appeal. The Parties to this Agreement acknowledge that their rights to outside binding arbitration or civil litigation concerning disputes in relation to the Project are to be entirely handled through the DRB process and the Parties accordingly waive those rights.

8. It shall be the responsibility of the legal counsels of the Parties to point out matters of law and regulations that are applicable to the actions taken by the DRB. If any actions of the DRB are found to be in conflict with applicable local, state or federal or international laws or regulations, only those DRB actions that are directly affected by those conflicts shall be voided if necessary to meet the conditions and requirements of the local, state, federal or international laws and regulations.
9. Any disputes that develop as to the terms and provisions of this Agreement shall be settled through Mediation-Arbitration (Med-Arb) as provided by and according to the Rules and Procedures of Construction Dispute Resolution Services, LLC of Santa Fe, New Mexico and the Rules and Procedures as specified in the Dispute Resolution section of this Agreement. The mediator and/or arbitrator shall be selected by mutual consent of the Parties to this Agreement from the appropriate CDRS list of Domestic or International Dispute Resolution Specialists. If the Parties are not able to mutually select a mediator and/or an arbitrator, the CDRS DRB administrator shall have the responsibility to select and appoint a mediator and/or arbitrator to handle the dispute.

SIGNATORIES

The following individuals have been authorized to act as the official representative of the Parties to this Agreement and by signing this Agreement; they encumber and obligate the Party that they represent to the terms and conditions, rules and procedures and stipulations that are specified and described in this Agreement:

For the Owner _____	Date _____
For the Contractor _____	Date _____
Other Party _____	Date _____
Other Party _____	Date _____
Other Party _____	Date _____
Other Party _____	Date _____

The following DRB members acknowledge that they have read and understand all of the terms and conditions of this Agreement concerning the role and responsibilities of the DRB and agree to the Agreement's terms and conditions:

DRB Member _____	Date _____
DRB Member _____	Date _____
DRB Member _____	Date _____