



CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC
Specializing in Mediation & Arbitration

3600 Rodeo Lane, Suite B7
Santa Fe, NM 87507

New Mexico: 505-474-9050
Fax Phone: 505-474-9061

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

Website: www.constructiondisputes-cdrs.com

DISPUTE REVIEW BOARD AGREEMENT
LARGE RESIDENTIAL AND SMALL COMMERCIAL

PARTIES

OWNER (Owner) _____

ADDRESS _____

GENERAL CONTRACTOR (GC) _____

ADDRESS _____

(The Owner and the GC together shall be referred to as the Parties)

GENERAL CONSTRUCTION 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 GC for construction-related matters concerning the Project. The Owner and the GC hereby acknowledge that the DRB shall also have the power and the authority to render final and binding decisions on Project related disputes between the Owner and the GC if the Parties cannot come to an 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, enabling 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 is scheduled and/or is requested by either Party to this Agreement. The DRB shall have the authority to schedule meetings and hearings that it feels are appropriate to address 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 (Opinions) and or recommendations, in a timely manner, as requested by either Party or as the DRB feels is appropriate in carrying out its duties and responsibilities to the Parties to this Agreement.
6. To allow the Neutral Member to serve as the DRB Chair and to serve as a mediator if a “Binding Mediation” procedure should be required. The binding mediation shall be conducted according to the Rules and Procedures of Construction Dispute Resolution Services, LLC of Santa Fe, New Mexico.
7. To allow the two, non-chair neutral members of the DRB to act as co-mediators and the DRB Chair, if required, to serve as a single arbitrator if the Parties have selected Med-Arb as their dispute resolution procedure.
8. To make periodic jobsite visits as per the pre-arranged schedule or as required to effectively handle the responsibilities and duties of the DRB.
9. 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

□ **OPTION 1.** The DRB shall consist of three members, one neutral member selected from the CDRS Panel of DRB Specialists, the Owner and the GC. All three members shall participate in the decision making duties and responsibilities of the DRB. The neutral member shall serve as the mediator if binding mediation shall be required.

□ **OPTION 2.** The DRB shall consist of five members, one neutral member selected from the CDRS Panel of DRB Specialists, the Owner, the GC, an Owner's Representative and the GC's Representative. All five members shall participate in the decision making duties and responsibilities of the DRB. The neutral member shall serve as the mediator if binding mediation shall be required.

□ **OPTION 3.** The DRB shall consist of five members, one neutral member selected from the CDRS Panel of DRB Specialists, the Owner, the GC, an Owner's Representative, and the GC's Representative. Only the neutral member, the Owner and the GC shall be involved in the decision making duties and responsibilities of the DRB. Only the DRB Chair shall render a decision if binding mediation is required. The Owner's Representative and the GC's Representative's primary role is to provide the information necessary for the DRB to be up-to-date on all matters to come before the DRB. They also may serve as advisors to the Owner or the GC as required by the Party who selected them.

□ **OPTION 4.** The DRB shall consist of five members, three neutral members selected from the CDRS Panel of DRB Specialists, an Owner's Representative and a GC's Representative. All five members shall participate only in the decision making duties and responsibilities of the DRB. The Owner's Representative and the GC's Representative may also serve as advisors to the Owner or the GC as required by the Party who selected them. The two non-chair neutral members of the DRB shall serve as co-mediators if required. The DRB chair shall serve as mediator if binding mediation shall be required or as the single arbitrator if arbitration shall be required.

□ **OPTION 5.** The DRB shall consist of five members, three neutral members selected from the CDRS Panel of DRB Specialists, an Owner's Representative and a GC's Representative. All five members shall participate only in the decision making duties and responsibilities of the DRB. The Owner's Representative and the GC's Representative may also serve as advisors to the Owner or the GC as required by the Party who selected them. The two non-chair neutral members of the DRB shall serve as co-mediators if required. The three neutral DRB members shall serve as arbitrators if arbitration is required unless one of the Parties feels that one or both of the two co-mediators has received confidential or privileged information and should be eliminated as an arbitrator, in which case the two co-mediators shall be disqualified and the DRB Chair shall serve as a single arbitrator.

OWNER'S RESPONSIBILITIES

The Owner's responsibilities shall include but not be limited to the following depending on which DRB Option was selected above:

1. To select, with the agreement of the GC, the one neutral member of the DRB.
2. To select, if three neutral members are to be selected, one neutral member of the DRB.
3. To select, with the agreement of the GC, if three neutral members are to be selected, the Chair of the DRB.
4. To select, if required, an Owner's Representative to represent them on the DRB.
5. To provide, along with the cooperation of the GC, 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.
6. To make every effort to resolve a dispute either before or after an advisory opinion has been issued by the DRB.
7. To never consult privately or discuss any issues concerning the Project with any neutral member of the DRB.
8. To help facilitate and/or arrange the DRB meetings or jobsite visits of the DRB.
9. Provide any ancillary assistance to the DRB including but not limited to: providing a location for the DRB meetings, providing clerical and/or secretarial services as requested by the DRB, providing transportation as required for the DRB members, providing protective gear and apparel as required by the DRB members during jobsite visits 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.
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.

CONTRACTOR'S RESPONSIBILITIES

The GC's responsibilities shall include but not be limited to the following depending on which DRB Option was selected above:

1. To select, with the agreement of the Owner, the one neutral member of the DRB.
2. To select, if three neutral members are to be selected, one neutral member of the DRB.
3. To select, with the agreement of the Owner, if three neutral members are to be selected, the Chair of the DRB.
4. To select, if required, a GC's Representative to represent them on the DRB.
5. To 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.
6. To make every effort to resolve a dispute either before or after an advisory opinion has been issued by the DRB.
7. To never consult privately or discuss any issues concerning the Project with any neutral member of the DRB.

8. To help facilitate and/or arrange the DRB meetings or jobsite visits of the DRB.
9. Provide any ancillary assistance to the DRB including but not limited to: providing a location for the DRB meetings, providing clerical and/or secretarial services as requested by the DRB, providing transportation as required for the DRB members, providing protective gear and apparel as required by the DRB members during jobsite visits and any other applicable assistance that the GC 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.
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 DRB member.
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 (If applicable).
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, to render final and binding decisions if "Binding Mediation" is specified in the Agreement, to perform in a professional manner, a co-mediation if specified in the Agreement or 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.

OWNER'S AND GC'S REPRESENTATIVE'S RESPONSIBILITIES

The Owner's Representative and the General Contractor's Representatives 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 Representative at any time and the Contractor may replace or find a substitute for his/her/its
4. Representative at any time as long as a timely notification is given to the DRB Chair and the other Party to the Agreement.

5. 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 GC'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.
6. 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 dispute resolution process that has been specified in this Agreement. If required, 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, if specified in the Agreement, shall function as a tripartite arbitration panel, or the DRB Chair shall serve as a single arbitrator, if the other two neutrals have been disqualified as specified elsewhere in this Agreement, 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. If applicable, 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 the DRB Chair is acting as either a mediator in a specified "Binding Mediation" or as a single arbitrator, his/her decision or award 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 HARMLESS 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 General Contractor _____ 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 _____