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ConsensusDocs DRB Addendum 200.5
STANDARD THREE-PARTY AGREEMENT FOR A DISPUTE REVIEW BOARD

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STANDARD THREE-PARTY AGREEMENT FOR A DISPUTE REVIEW BOARD



ARTICLE 1 AGREEMENT

This Three-Party Agreement ("TPA") is made this [] day of [] in the year [], by and between [], ("Owner"), [] ("Constructor"), collectively, the ("Parties"), and the Dispute Review Board ("DRB") comprised of:

- 1) [];
- 2) []; and
- 3) []

for construction and services in connection with the following Project [].

Notice to the Parties shall be given at the above addresses.

1.1 The Parties have entered into an agreement ("Agreement"), which is attached and more particularly describes the Project ("Project") to be constructed.

1.2 The Parties have agreed to the ConsensusDocs 200.4 Dispute Review Board Addendum or similar contract document that provides for the establishment and operation of a DRB as a dispute mitigation procedure to avoid, mitigate, and resolve disputes and potential disputes.

ARTICLE 2 PURPOSE AND ROLE

2.1 The DRB shall assist in and facilitate avoidance of disputes and the timely and impartial resolution of disputes that are referred to it, all in accordance with the DRB Addendum.

2.2 There shall be no ex parte communications between the DRB members and the Parties, except that the DRB Chair may communicate with the appropriate Party on scheduling and administrative matters as provided in the DRB's Operating Procedures.



2.3 Whether Party-nominated or otherwise selected, each DRB member shall be neutral and not be considered a representative of any Party.

ARTICLE 3 DRB SCOPE OF WORK

3.1 General

3.1.1 If the Parties have not already selected a Chair, appoint one of the DRB members to act as Chair of the DRB to administer the DRB process in accordance with this TPA.

3.1.2 Stay abreast of Project developments by means of periodic meetings and site visits, review of designated Project documents, and by other means as mutually agreed by all Parties.

3.1.3 Facilitate communications between the Parties on an ongoing basis to avoid or to mitigate disputes or impacts to the project from unexpected events during the progress of the work.

3.1.4 Establish DRB Operating Procedures consistent with the requirements of the Agreement and the DRB Addendum:

3.1.4.1 Prepare Operating Procedures that will include, at a minimum, the following: administrative duties and processes; scheduling and conducting periodic meetings; rendering of advisory opinions; content and format of information and documents to be furnished regularly to the DRB; content and format of information and documents that may be presented at DRB hearings; preparation for and conduct of hearings; and preparation of DRB reports.

3.1.4.2 After review and approval by the Parties, adopt the Operating Procedures at the first DRB meeting with the Parties and provide copies of the Operating Procedures (including all modified Operating Procedures) to the Parties.

3.1.4.3 Initiate new procedures or modify existing procedures as agreed to by the DRB and the Parties.

3.1.5 Recommend Resolution of Disputes:

3.1.5.1 Provide advisory opinions as requested jointly by the Parties and as deemed appropriate by the DRB.

3.1.5.2 Upon referral of a dispute from either Owner or Constructor, confer with the Parties to schedule and conduct a timely and orderly hearing process.

3.1.5.3 Convene internal conferences or meetings as needed to review and discuss the dispute, review the results of any hearing, and formulate the report.

3.1.5.4 Issue timely, executed written reports to the Parties, including the DRB's supporting rationale and recommendation(s).

3.1.5.5 When requested and deemed appropriate by the DRB, provide written responses to requests for clarification or reconsideration made by either Party.

3.1.6 Perform all other services and assume such responsibilities, as agreed by the Parties, as may be required to achieve the purpose of the DRB Addendum.

ARTICLE 4 ETHICS AND RESPONSIBILITIES

4.1 DRB Members shall:



4.1.1 Act ethically, maintain impartiality, and avoid conflicts of interest. DRB Members shall promptly advise the Parties upon becoming aware of any development that could be perceived as a conflict of interest. This obligation to disclose continues throughout the life of the DRB.

4.1.2 Not engage in ex parte communications, except as provided for in the DRB's Operating Procedures. Except as required when performing the duties of the Chair as provided in the Operating Procedures, or conducting a hearing for which a Party refuses to attend, do not meet or communicate with either Party in the absence of the other Party.

4.1.3 Refrain from communicating an individual or collective opinion of merit, in whole or in part, for any potential or other dispute at any time prior to the issue of a report, except in the case of an advisory opinion.

4.1.4 Not use information acquired during the DRB activities for personal advantage, or divulge any confidential information to others unless approved by the Parties.

4.1.5 Conduct meetings and hearings in an expeditious, diligent, orderly, and impartial manner.

4.1.6 Impartially consider all disputes referred to it. Reports shall be based on the provisions of the contract documents, relevant facts, and applicable law.

4.1.7 Strive to reach unanimous recommendations. If a report signed by all three DRB members is not achieved, then a DRB report shall include written minority recommendations and supporting rationale with the report, but without identifying the DRB member with the minority opinion.

4.1.8 Receive compensation only as specified in this Agreement, and not receive any bonus or commission payments.

4.2 Owner Responsibilities

4.2.1 Except for participation in the DRB's activities, do not solicit advice or consultation from the DRB or its Members on matters dealing with the conduct of the work or resolution of problems that might compromise the DRB's ability to impartially perform their duties.

4.2.2 Furnish to each DRB member one copy of the conformed contract documents; progress schedule and updates; progress reports; minutes of progress meetings; change orders, submittal, RFI and change order logs; and other documents pertinent to the performance of the Agreement and necessary for the DRB to conduct its operations.

4.2.3 Coordinate DRB operations in cooperation with Constructor.

4.2.4 Arrange for or provide conference facilities at or near the site, and provide logistical services as needed to support the DRB's operations.

4.2.5 Cooperate with Constructor and the DRB to facilitate avoidance of disputes and the timely and impartial resolution of disputes referred to the DRB.

4.2.6 Pay the fees and costs as agreed to in this TPA.

4.3 Constructor Responsibilities



4.3.1 Except for participation in the DRB's activities, do not solicit advice or consultation from the DRB or its members on matters dealing with the conduct of the work or resolution of problems that might compromise the DRB's ability to impartially perform their duties.

4.3.2 Furnish to each DRB member (and to Owner as needed), one copy of pertinent documents other than those furnished by Owner, as the DRB may request.

4.3.3 Cooperate with Owner and DRB to facilitate avoidance of disputes and the timely and impartial resolution of disputes referred to the DRB.

4.3.4 Pay the fees and costs as agreed to in this TPA.

ARTICLE 5 DURATION OF DRB ACTIVITIES

5.1 Unless the DRB Chair has been previously identified by the Parties, the DRB shall begin its activities by selecting the Chair and receiving Party approvals of the appointment. After selection of the Chair and Party approval, the DRB shall proceed in accordance with the DRB Addendum and the TPA.

5.2 The TPA shall survive the termination, resignation, incapacity, or death of any DRB member.

5.3 The DRB's jurisdiction under the TPA shall end on the date of final payment under the Agreement, unless the Parties mutually agree in writing to extend the DRB's term or to terminate the DRB earlier.

ARTICLE 6 COST OF THE DRB PROCESS

6.1 The Parties shall each bear their respective in-house costs and costs of providing those DRB-related services for which such responsibility has been allocated herein.

6.2 Unless otherwise agreed by the Parties, the Parties shall equally bear the cost of the DRB's services in accordance with the Agreement.

ARTICLE 7 PAYMENT TO DRB

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

7.2 Payment for services rendered by DRB members shall be at the rate and conditions agreed to between the Parties and each DRB member.

7.3 DRB members shall be reimbursed for actual direct, non-salary expenses including automobile mileage, parking, travel expenses from the point of departure to the initial point of arrival, automobile rental, taxi fares, food and lodging, printing/copying costs, long distance telephone, postage and courier delivery, subject to any limitations imposed by the Agreement.

7.4 DRB members shall individually submit invoices for work completed to Constructor:

7.4.1 Not more often than once per month.

7.4.2 Based on the agreed billing rate and conditions and on the number of hours expended, together with direct, non-salary expenses including an itemized listing supported by copies of original bills, invoices, and expense accounts.

7.4.3 Accompanied by a description of activities performed during that period.



Constructor shall promptly seek approval of Owner to pay the DRB invoices and shall pay the accepted invoices within thirty (30) days after receipt of approval from Owner. Constructor shall be reimbursed for Owner's portion of the DRB costs in accordance with the TPA.

ARTICLE 8 CONFIDENTIALITY AND RECORDKEEPING

8.1 All information provided to and communications with the DRB shall be deemed confidential and for settlement purposes only, unless otherwise agreed in writing by the Parties.

8.2 No DRB member shall divulge to third parties information that has been acquired during DRB activities without obtaining prior written approval from the Parties.

8.3 DRB members shall maintain cost records pertaining to the TPA for inspection by Owner and Constructor for a period of [specify time period] following the completion or termination of the TPA.

ARTICLE 9 ASSIGNMENT

No party to the TPA shall assign any duty established under the TPA.

ARTICLE 10 TERMINATION

10.1 The TPA may be terminated by mutual agreement of the Parties at any time upon not less than thirty (30) days written notice to the DRB.

10.2 Individual DRB members may be terminated by a Party after written notice is given to the other Party; provided, however, if there is a disagreement about the proposed termination, the Parties agree to use the dispute mitigation procedure under the Agreement before such termination is made effective.

10.3 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. The TPA shall be amended as needed to add the replacement member to the DRB and enter into the TPA, as amended.

ARTICLE 11 LEGAL RELATIONS

11.1 The Parties 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 contractor and not as an employee of Owner or Constructor.

11.2 DRB members shall not participate in, or be required to participate in, any subsequent dispute or legal proceedings regarding the operations of the DRB, including, but not limited to, depositions, testimony, or disclosure of any information regarding the deliberations of the DRB.

11.3 The Parties acknowledge that each DRB member is acting to facilitate the avoidance and resolution of disputes. 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.

11.4 To the fullest extent permitted by law, the Parties, jointly and severally, shall defend, indemnify, and hold harmless each DRB member from any and all claims, losses, demands, costs, and damages (including reasonable attorneys' fees) for bodily injury, property damage, or economic or other loss arising out of or related to the DRB members carrying out DRB activities.

ARTICLE 12 DISPUTES REGARDING THE TPA



Disputes among the Parties and DRB Members arising out of the TPA that cannot be resolved by negotiation and any actions to enforce any right or obligation under the TPA shall be initiated in a court of competent jurisdiction in the location of the Project and the DRB members consent to the personal jurisdiction in such jurisdiction.

ARTICLE 13 FUNDING AGENCY REVIEW

The Funding Agency, which is [REDACTED], has the right to attend DRB meetings and hearings and to review DRB reports, but not to attend private DRB deliberations.

DRB MEMBERS:

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCTOR: [REDACTED]

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

OWNER: [REDACTED]

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

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