

DISPUTE RESOLUTION PROCEDURE

A. INFORMAL DISPUTE RESOLUTION

The parties to the Agreement agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any and all disputes in relation to the Contract will initially be referred to the Project Manager or the Contractor Representative for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative (“DRR”) process set forth below, which is intended to be an expedited process.

B. DISPUTE RESOLUTION REPRESENTATIVE (“DRR”) PROCESS

1. The Parties under the Agreement agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project (“Claim” or “Claims”) shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the “DRR Process”).
2. The DRR Process shall be initiated through service of a DRR Notice as set forth below:
 - a. For claims by the Contractor, the DRR Process shall be initiated by the party asserting the claim serving written notice on the City setting forth in detail:
 - (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project;
 - (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved;
 - (v) the specific contract provisions in the Agreement or Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.
 - b. For claims by the City, the DRR process will be initiated by the City providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Agreement or Contract Documents that apply, and the relief requested.
3. The other parties shall respond in writing to the DRR Notice (“DRR Response”) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed to the other parties’ Dispute Resolution Representatives.
4. The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar

days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

5. At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.
6. The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.
7. Unless otherwise designated in a written notice to the other parties, the City Manager or the Contractor, or their designees, shall act as the parties' designated Dispute Resolution Representatives.
8. If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties' designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or Amendment, the parties shall execute an appropriate written Change Order or Amendment pursuant to the terms of the Contract Documents.

C. MEDIATION

1. Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under B (4) above, or after the DRR is terminated pursuant to ¶ B (5) above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.
2. The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar days of the written demand, either party may make a request to the Civil Presiding Judge of the Graham County Superior Court to appoint a mediator. The mediation shall occur within forth (40) calendar days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time.
3. The mediator shall be an experienced mediator, arbitrator or litigator of construction disputes.
4. Each party shall provide to the other party and the mediator all of the information and documentation required under B(1) and (2) above, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.

5. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Safford, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction thereof.

D. LITIGATION

Any claim arising out of or related to the Agreement or Contract Documents, except Claims relating to aesthetic effect in the Contract Documents, shall be in Arizona in the Graham County Superior Court.