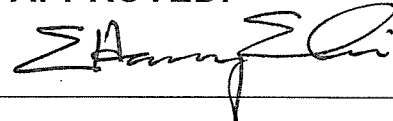


**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
WATER SYSTEM IMPROVEMENT PROGRAM
CONSTRUCTION MANAGEMENT PROCEDURES**

**SECTION: WSIP CONSTRUCTION
MANAGEMENT**

APPROVED:



**PROCEDURE NO.: 031
TITLE: DISPUTE RESOLUTION ADVISOR
(DRA)**

DATE: 08/26/09

REVISION NO.: 1

1.0 Policy

Dispute Resolution Advisors (DRAs) are required for each WSIP Construction Contract with a value equal to \$10 million to under \$20 million, if a Dispute Review Board (DRB) is not required by the Regional PM. For WSIP Construction Contracts with a value equal to \$2 million and to under \$10 million, DRAs are required.

This CM Procedure applies to all personnel working on the Water System Improvement Program (WSIP) to the extent that their Work is affected by this WSIP Construction Management (CM) Procedure and does not conflict with specific San Francisco Public Utilities Commission (SFPUC) policies or the Contract under which the Work is executed.

2.0 Description

This CM Procedure establishes the requirements for selecting and using a Dispute Resolution Advisor (DRA). The DRA will assist the City and the Construction Contractor by facilitating the timely resolution of disputes related to the performance of Work.

3.0 Definitions

3.1 Dispute

A Dispute is a disagreement related to the performance of Work under the specified Contract between the City and the Contractor.

3.2 Dispute Meeting

The formal and informal Dispute Meeting is a process to review a dispute eligible for consideration that results in a recommendation by the DRA.

3.3 Dispute Resolution Advisor (DRA)

The Dispute Resolution Advisor is a professional selected by the parties (City and Contractor) to facilitate the timely resolution of disputes relating to the performance of Work under the specified Contract; and is signatory to the DRA Agreement, refer to Attachment 031-2.

3.4 DRA Agreement

The DRA Agreement is an agreement, appended to Division 0 Specification Section 00803/DRA of the Contract Documents, to which the DRA, the Project CM, and the Contractor are parties; and, which establishes the DRA for this Project, consistent with the requirements of the Specification.

3.5 DRA Report

The DRA Report is a non-binding, written recommendation issued by the DRA as a result of a formal Dispute Meeting, described in the referenced Specification.

DRA Reports are admissible in subsequent litigation or other dispute resolution proceedings.

3.6 Parties Indirectly Involved

The construction managers, architects/engineers, sub-consultants, counsel, consultants, or subcontractors and suppliers of all tiers on the Project are considered "Parties Indirectly Involved".

4.0 Responsibilities

4.1 Project Construction Manager (Project CM)

The Project CM, assisted by the Field Construction Administrator and Office Engineer, manages and administers the project construction contracts, and serves as prime point of contact between the Contractor, the City, and external stakeholders comprised of community residents, local government officials and agencies, schools, churches, businesses, and local community organizations, among others.

4.1.1 The Project CM identifies possible nominees for DRA and selects one member that is mutually agreed upon with the Contractor. The Project CM participates in Formal and Informal Dispute Meeting Processes to review disputes.

4.2 Contractor

The Contractor is the entity awarded the Construction Contract to perform the Work. The Contractor identifies possible nominees for DRA, and selects one member that is mutually agreed upon with the Project CM. He/she participates in Formal and Informal Dispute Meeting Processes to review disputes.

4.3 Dispute Resolution Advisor (DRA)

The DRA is the selected professional responsible for implementing the DRA process as outlined in Section 5.0, which includes establishing procedures; scheduling site visits; convening Dispute Meetings; determining along with the parties whether to seek a Formal or Informal Dispute Resolution Process; and, presenting non-binding recommendations and a written report when using the formal process.

4.4 Deputy Director of Construction (DDC)

The Deputy Director of Construction manages the Construction and Close-out phases of all WSIP Projects. The DDC manages the RPMs and construction management teams.

4.4.1 Prior to a Formal Dispute Meeting, the dispute must be rejected by the DDC.

5.0 Implementation

Reference Attachment 031-1, DRA Flow Chart.

5.1 Mobilization Phase

During the Construction Mobilization Phase, the Project CM identifies possible DRA nominees from the SFPUC DRA/DRB Database and Resource / Contact List, based on professional experience, training and project scope (reference Division 0 Specification Section 00803/DRA and Attachment 031-2).

5.1.1 The Project CM provides the Contractor access to the Database and Resource List.

5.2 Notice to Proceed (NTP) Date

Within Fifteen (15) calendar days before Notice to Proceed (NTP) date, the Project CM and the Contractor each identifies three (3) possible DRA nominees and exchange their full names and contact information; resumes with applicable certifications, experience and qualifications; and, disclosure statements.

5.2.1 The Project CM and the Contractor select one of the six (6) nominees to be the DRA. It is advisable that the Project CM and Contractor together interview at least the primary nominee to determine his/her ability to listen to and develop rapport with the parties.

5.2.2 If they cannot agree on one nominee, they choose one of the three (3) nominated by the other. The final selection of the DRA will be decided by a coin toss between the two (2) nominees.

5.3 30-Calendar Days After NTP

Within Thirty (30) calendar days after NTP, the Project CM, the Contractor and the selected DRA execute the DRA Agreement. All parties must be signatory to the DRA Agreement (reference Attachment 031-3) by the time of the first meeting with the DRA.

5.3.1 The DRA meets with the Project CM and the Contractor at the start of the project to establish procedures in conformance with the Contract and the DRA Agreement. The entire procedure is kept flexible to adapt to changing situations. Any procedures established or modified over the course of the Project will be agreed upon by both parties.

5.3.2 Subsequent meetings will be held only to hear disputes between the parties.

5.4 Initiate Review of Eligible Dispute

Either party may initiate review of an eligible dispute by written notice to the DRA, copied concurrently to the other party. Prior to referring a dispute to the DRA, good faith negotiations must occur between the Project CM and the Contractor towards resolving their issues.

5.4.1 The Contractor may initiate dispute review only as to items presented to and rejected by the Project CM and the department head.

5.5 Dispute Meeting

The DRA convenes the Dispute Meeting no later than Twenty-five (25) calendar days after receipt of the written referral. Within the written dispute referral the requesting party may indicate their preference for an Informal Dispute Meeting. No later than Three (3) working days after receipt of the written referral, the DRA and the other party must indicate agreement or disagreement to the approach.

5.6 Informal Dispute Meeting

5.6.1 If an Informal Dispute Meeting is agreed upon, the DRA requests both parties to provide copies of written evidence or documentation to the DRA and the other party at least Ten (10) calendar days prior to the scheduled Dispute Meeting.

5.6.2 The DRA, with prior approval from the parties, may obtain technical services necessary to adequately review the disputes presented, including audit, geotechnical, schedule analysis and other services. The Project CM and the Contractor equally bear the cost of the services of the outside expert employed by the DRA.

- 5.6.3 The DRA may keep his/her own notes during a Dispute Meeting. No other reporting of the Dispute Meeting proceedings is permitted.
- 5.6.4 The Dispute Meetings are conducted in accordance with the operating procedures established by the DRA.
- 5.6.5 The DRA will proceed with the Meeting, even if some or all of the representatives of either party fails to appear at the appointed time.
- 5.6.6 The DRA deliberates in private on the same day, or as otherwise agreed to by the parties, until the DRA develops recommendations with findings for the parties. The DRA verbally delivers its recommendations to the parties. The DRA will not issue a written report.
- 5.6.7 If dispute is settled, the Project CM and the Contractor promptly accept the recommendations and implement a settlement.

5.7 Formal Dispute Meeting

- 5.7.1 If the dispute cannot be settled informally, either party may request a Formal Dispute Meeting. Prior to a Formal Dispute Meeting the dispute must be rejected by the Project CM and the Deputy Director of Construction.
- 5.7.2 The Project CM and Contractor present their respective positions to the DRA. The DRA is not bound by its verbal recommendations made previously during an Informal Dispute Meeting.
- 5.7.3 For Formal Dispute Meetings the DRA may request clarifying information from either party within Five (5) working days after the Formal Dispute Meeting. Requested information will be submitted to the DRA within Five (5) working days of the DRA's request.
- 5.7.4 The DRA signs and issues a formal written DRA Report with non-binding recommendations for resolution of a dispute and, if appropriate, recommended guidelines for determining compensation within Ten (10) calendar days of the Formal Dispute Meeting or within Five (5) working days of receiving requested clarification information, whichever is later.
- 5.7.5 Within Five (5) working days following receipt of the DRA Report, either party may request clarification of the DRA Report. The DRA provides written clarification to both parties within Five (5) working days of receipt of a request for clarification.
- 5.7.6 Within Ten (10) calendar days following receipt of the DRA Report, either party may request reconsideration of a DRA Report. As expeditiously as practicable, the DRA will provide written reconsideration to both parties.

- 5.7.7 Within ten (10) calendar days of receipt of the DRA Report or following receipt of responses to requests for clarification or reconsideration, the Project CM and the Contractor submit their written acceptance or rejection of the recommendation(s) contained in a DRA Report concurrently to the other party and to the DRA.
- 5.7.8 If the parties are able to settle their dispute with the aid of the DRA Report, the Project CM and Contractor promptly accept and implement the settlement of the parties.

6.0 Other Procedural Requirements

6.1 Subsequent Proceedings

- 6.1.1 If the DRA process does not result in a resolution of a dispute, the City or Contractor may pursue other contractual remedies.
- 6.1.2 In any subsequent litigation or similar proceeding arising out of a dispute heard by the DRA, only the final, written DRA Report may be admissible as evidence.

6.2 Review of Compensation

- 6.2.1 If the parties cannot agree on compensation within Thirty (30) calendar days of the acceptance by both parties of the settlement, either party may request the DRA to make a recommendation regarding compensation.
- 6.2.2 If the Contractor seeks a recommendation from the DRA as to additional compensation under the Contract, the Project CM may request a review or audit of the Contractor's project and accounting records within Ten (10) calendar days of the Contractor's request. The Project CM will select and bear the cost of the individual or firm performing the review or audit.

6.3 Compensation of the Dispute Resolution Advisor

Fees and expenses of the DRA are shared equally by the Project CM and the Contractor as set forth in the Three-Party Agreement. The Contractor pays the DRA invoices after approval by both parties. The City, upon receipt of the invoices, reimburses the Contractor for 50% of such invoices, with no mark-up.

- 6.3.1 Standard hourly rates have been established. Check with the responsible Regional Construction Manager (RCM) for guidance.

7.0 References

7.1 Technical Specifications

No. 00803 DRB

No. 00803 DRB/TPA

No. 00803 DRA

7.2 CM Procedures

No. 019 Dispute Review Board

7.3 Others

None

8.0 Attachments

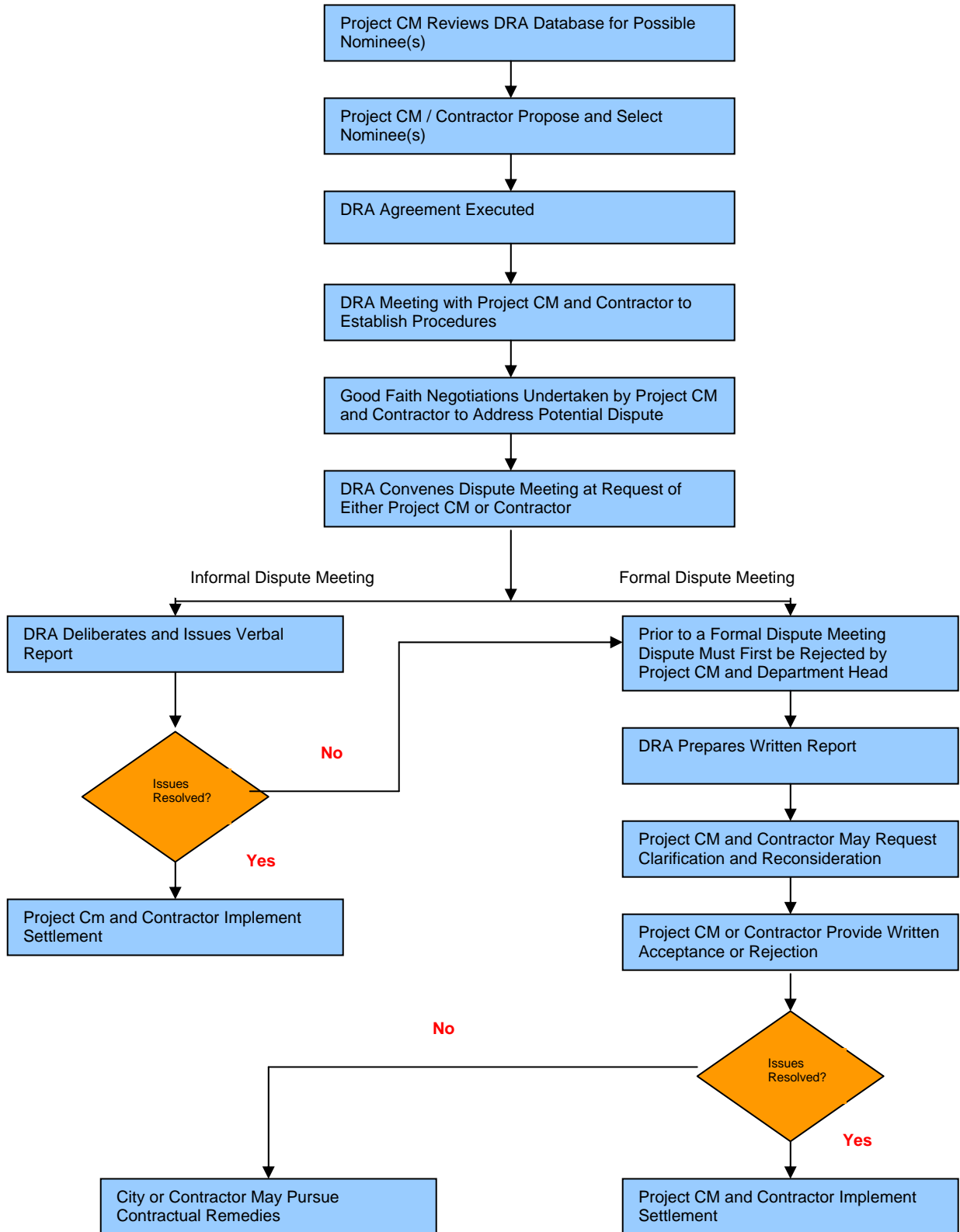
031-1 Dispute Resolution Advisor Flow Chart

031-2 DRA/DRB Database, Resources and Contacts - *SAMPLE*

031-3 DRA Three-Party Agreement, Division 0 Specification Section
00803/DRB/TPA

031-4 Revision Control Log

Attachment 031 – 1 Dispute Resolution Advisor Flow Chart



**Attachment 031-2
DRA/DRB Database, Resources and Contacts – SAMPLE**

Dispute Resolution Advisor / Dispute Review Board List (AAA/Caltrans/DRBF/JAMS) - SAMPLE

Name	Brief Summary of Experience	Job/ Residence Travel	Telephone No.	E-mail	Resume	Comments
Allen, Lowell	10 years of experience DRBs CALTRANS construction projects.	Districts 1 through 4 and 10	(707) 443-3893	lcaeng@sbcglobal.net	<u>Yes</u>	DRA Trg. /Bridges
Anderson, Norman	DRB member/project neutral on 80+ projects in western USA. Served as either Contractor's or Agency's representative in dispute resolution. Heavy, Highway, Building Construction.	Anywhere in California	(360) 754-3819	normananderson@msn.com	<u>Yes</u>	DRA Trg. Lives in WA; Bay Bridge; primarily works on DOT projects; 3 combined sewer/tunnel projects; pump station. R
Baker, Bill	Civil Engineer: Arbitrator/Mediator in construction industry for nearly 40 years. DRB Member on 40+ projects, over 20 as Chair on Caltrans projects. Pipelines, seismic upgrade utility systems, tunnels, bridges.	Anywhere in California	(707) 942-5886	wbaker@napanet.net	<u>Yes</u>	DRBF, DRA Trg., AAA; PUC ok; \$325/hr.: R
Bauer, Carl F.	50 years' experience in Construction Industry, including 30 in executive positions. Served on 26 DRBs, 6 as Chairman. Active in ACG, Beavers; Heavy, Highway, Building Construction.	Anywhere in California	(916) 944-2843	c.bauer@sbcglobal.net	<u>Yes</u>	DRBF, DRA Trg.
Carlson, William	DRBF: 30+ years in heavy, highway, marine and building construction.	Escondido, CA	(760) 751-2081; cell: (760) 715-1376	wjccal@aol.com	<u>Yes</u>	DRA Trg. R
Dooley David	Attorney, Construction Law, Arbitrator for AAA, DGS, PWCAC.	Lives in Mill Valley	(415) 383-0741			DRB /DRA Trg.
Graham, Bob	42 years experience in design, construction, traffic, engineering, and building construction, 37 years with Caltrans, 5 years with Bechtel – Service on 7 DRBs.	Anywhere in California	(650) 967-9115	grahamre@comcast.net	<u>Yes</u>	DRB Trg. R DRB member on storm water treatment system
Lewis, Richard	32 years with Granite Const., including 3 Design-Build highway, dam and lock projects. Served on 23 DRBs, 12 as Chair on public works projects for 7 agencies.	Lives in Escondido may not want to travel to No. CA	(760) 839-0859	dicklewis1@cox.net	<u>Yes</u>	DRB Ch 12 projects. Design Build projects
Madewell, Charles	No experience. DRBF: Licensed Civil Engineer; 40 years experience in structures, heavy civil, industrial as a contractor and owner's representative. Dillingham Construction Specialties: water and wastewater treatment facilities, underground pipelines, water dams, other.	Lives in Danville, CA	(925) 216-3429	cjmadewell@sbcglobal.net	<u>Yes</u>	DRB Chair Trg.; no DRB exp. R
Reading, Ron	40 years progressive experience in heavy civil engineering construction with an extensive background in project management.	Anywhere in California	(925) 820-9131	r-mreading@msn.com	<u>Yes</u>	DRA Trg.
Thomas, Hugh	Involved with construction contract dispute resolution since 1977. Served on 55 DRBs, Chair for 20 of the DRBs. Primary experience Caltrans.	Anywhere in California	(530) 673-9788	thomashu@comcast.net	<u>Yes</u>	DRB/DRA and Chair Trg. R
<p>Note: Updated 12/23/08. R: Responded to SFPUC / CMB Survey. Sources: Dispute Resolution Board Foundation (DRBF), Caltrans, American Arbitration Association (AAA), JAMS and Contractor Associations (AGC, EUCA).</p>						

Attachment 031 – 3
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DRA Three-Party Agreement, Division 0 Specification
Section 00803/DRB/TPA

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DOCUMENT 00803/DRA/TPA
CITY AND COUNTY OF SAN FRANCISCO
DISPUTE RESOLUTION ADVISOR
THREE-PARTY AGREEMENT

THIS AGREEMENT, dated for convenience as of the _____ day of _____, 200__, is between the City and County of San Francisco (the "City"), acting by and through its Public Utilities Commission (the "PUC"), _____ (the "Contractor"), and the following individual: _____ (the "DRA").

Recitals

- A. The City, by and through its PUC, has awarded to the Contractor public work Contract No. _____ (the "Contract") for the construction of a public work known as _____ (the "Project").
- B. Included as part of the Contract is Document 00803/DRA, implementing a Dispute Resolution Advisor procedure for the Project (the "DRA Specification").
- C. The DRA has been selected in conformance with the DRA Specification.

Agreement

NOW THEREFORE, the City, the Contractor, and the DRA hereby agree as follows:

- 1. **Compliance with Specification.** The DRA agrees to be bound by the terms of the DRA Specification and to perform the required duties strictly as set forth in the DRA Specification. The DRA Specification is incorporated herein by reference as if fully set forth.
- 2. **Compensation.** The City and the Contractor agree that the DRA shall be compensated for his/her individual Services as DRA at a billing rate of \$_____ per hour. Compensation shall be paid at the stated billing rate, applied to travel time and reasonable study/consultation time, time spent in Dispute Meetings, and preparation of any written Report as set forth in the DRA Specification. Included in the billable rate shall be routine office expenses, such as secretarial, administrative, report preparation, telephone, computer, and internet connections.
- 3. **Additional Compensation.** Not included in the billable rate, and considered additional compensation, shall be any travel expenses, outside reproduction costs, and postage costs. Travel expenses must be approved in writing by both the City and the Contractor prior to being incurred. Outside reproduction and postage expenses for DRA Reports and other written communications may be billed at cost.
- 4. **Invoices.** The DRA shall submit to the Contractor invoices for work completed (a) not more often than once per month; (b) 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; and (c) accompanied by a description of activities performed daily during the invoice period.
- 5. **Confidentiality.** The DRA shall not divulge any information acquired during DRA activities without obtaining prior written approval from the City and the Contractor.
- 6. **Recordkeeping.** The DRA shall maintain cost records pertaining to this Agreement for inspection by the City or the Contractor for a period of three years following the end or termination of this Agreement.

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TITLE

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DRA Three-Party Agreement, Division 0 Specification
Section 00803/DRB/TPA

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7. **Assignment.** No party to this Agreement shall assign any duty established under this Agreement or the DRA Specification.
8. **Termination.** This Agreement may be terminated by mutual agreement of the City and the Contractor at any time upon not less than 10 days written notice to the DRA. The DRA may be terminated only by agreement of both the City and Contractor. If the DRA resigns, is unable to serve or is terminated, he/she will be replaced within four weeks in the same manner as he/she was originally selected under the DRA Specification. This Agreement shall be amended to indicate the member replacement.
9. **Legal Relations.** The parties to this Agreement expressly acknowledge that the DRA, in the performance of his or her duties under this Agreement and the DRA Specification, is acting in the capacity of an independent agent and not as an employee of the City or the Contractor. The DRA shall not participate in any subsequent dispute proceedings relating to the Contract or the Project. The City and Contractor release the DRA from any and all liability, claims, demands, actions and causes of action arising out of or resulting from the findings and recommendations of the DRA. The release set forth above excludes any and all liability, claims, demands, actions and causes of action arising out of or resulting from fraud or willful misconduct by the DRA.
10. **Jurisdiction and Venue.** Disputes among the City, the Contractor, and the DRA arising out of this Agreement shall be brought in the California Superior Court, County of San Francisco. The Agreement shall be interpreted in accordance with the laws of the State of California. The DRA hereby consent to the personal jurisdiction of the California Superior Court, County of San Francisco.
11. **Funding Agency Review.** The _____ [Agency funding the project] has the right to review the work of the DRA in progress, except for private meetings or deliberations of the DRA.

CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITES COMMISSION

[CONTRACTOR]

BY: _____
Name:
Title:

BY: _____
Name:
Title:

DRA

BY: _____

Approved as to form:
DENNIS J. HERRERA
City Attorney

BY: _____
Deputy City Attorney

SFPUC v3.0

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TITLE

**Attachment 031 – 4
Revision Control Log**

Revision No.	Revision Date	What changed?
Rev 1	August 26, 2009	<ul style="list-style-type: none">• Revised Attachment 2; reduced number of pages to one page
Rev 0	February 16, 2009	Signed