1.0 Policy
Dispute Resolution Advisors are required for each SFPUC Infrastructure Construction Contract with a value equal or more than $10 million and under $200 million, if a Dispute Review Board (DRB) is not required by the Construction Management Bureau (CMB) Manager.

This SFPUC Infrastructure Construction Management (CM) Procedure applies to all personnel working on SFPUC Infrastructure Projects during construction to the extent that their work is affected by this CM Procedure and does not conflict with specific SFPUC policies or the Contract under which the Work is executed.

2.0 Description
This SFPUC Infrastructure CM Procedure establishes the requirements for selecting and using a Dispute Resolution Advisor (DRA). The DRA will assist the City and the 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 a signatory to the DRA Agreement, refer to Attachment 025-2.

3.4 **DRA Agreement**  
The DRA Agreement is an agreement, appended to Contract Specification Section 00 73 10A to which the DRA, the RE, and the Contractor are parties and which establishes the DRA for the 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 not 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 **Resident Engineer (RE)**  
The RE manages and administers the SFPUC Infrastructure construction contracts, and serves as the primary 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 RE identifies possible nominees for the DRA and selects one member that is mutually agreed upon with the Contractor. The RE participates in Formal and Informal Dispute Meeting Processes to review disputes.

4.2 **Contractor**  
The Contractor is the entity awarded the Contract to perform the Work. The Contractor identifies possible nominees for the DRA, and selects one member that is mutually agreed upon with the RE. S/he 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 **Construction Management Bureau (CMB) Manager**
The CMB Manager manages the construction and close-out phases of all SFPUC Infrastructure Projects. The CMB Manager manages the Senior Project Managers (SPMs) and CM teams.

4.4.1 Prior to a Formal Dispute Meeting, the dispute raised by the Contractor must be rejected by the CMB Manager.

5.0 **Implementation**

5.1 **Mobilization Phase**
During the Construction Mobilization Phase, the RE identifies possible DRA nominees from the SFPUC DRA/DRB Database and Resource/Contact List, based on professional experience, training and scope (reference Contract Specification Section 00 73 10 and Attachment 025-1).

5.1.1 The RE provides the Contractor access to the Database and Resource/Contact List.

5.2 **Notice-to-Proceed (NTP) Date**
Within fifteen (15) calendar days of the NTP date, the RE and the Contractor each identify 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 RE and the Contractor select one of the six (6) nominees to be the DRA. It is advisable that the RE 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, each must choose one of the three (3) nominees 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 RE, the Contractor and the selected DRA execute the DRA Agreement. All parties must sign the DRA Agreement (reference Attachment 025-2) before the first meeting with the DRA.

5.3.1 The DRA meets with the RE 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 the 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 RE and the Contractor towards resolving their issues.

5.4.1 The Contractor may initiate a dispute review only in regards to items presented to and rejected by the RE and the CMB Manager.

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 RE 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 Dispute Meeting, even if some or all of the representatives of either party fail 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 the dispute is settled, the RE 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 RE and the CMB Manager.

5.7.2 The RE 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 RE 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 RE 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, the DRA Report and other DRA materials will not be admissible as evidence. Neither party may call the DRA as a witness in any subsequent proceeding.

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 RE 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 RE 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 RE 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. The CMB Manager will provide guidance to the RE.

7.0 **References**

7.1 **Technical Specifications**

Section 00 73 10 Dispute Resolution Advisor Specification
Section 00 73 12 Dispute Review Board Specification

7.2 **SFPUC Infrastructure CM Procedures**

No. 026 Dispute Review Board

7.3 **Others**

None

8.0 **Attachments**

025 - 1 DRA/DRB Database, Resources and Contacts - SAMPLE
025 - 2 DRA Three-Party Agreement, Contract Specification Section 00803/DRB/TPA
025 - 3 Revision Control Log
## Dispute Resolution Advisor / Dispute Review Board List (AAA/Caltrans/DRBF/JAMS) - Sample

<table>
<thead>
<tr>
<th>Name</th>
<th>Brief Summary of Experience</th>
<th>Job Residence Travel</th>
<th>Telephone No.</th>
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<tr>
<td>Allen, Lowell</td>
<td>10 years of experience in DRBF, CAlMAB, CMAB, and construction projects.</td>
<td>California</td>
<td>(617) 445-3800</td>
<td><a href="mailto:loweng@biophoton.net">loweng@biophoton.net</a></td>
<td>Yes</td>
<td>DRA/DRB</td>
</tr>
<tr>
<td>Anderson, Norman</td>
<td>DRBF member/project lead on 69% projects in western USA, served as liaison for Contractors or Agency's representative.</td>
<td>Anywhere in California</td>
<td>(606) 754-8819</td>
<td><a href="mailto:normanderson@msn.com">normanderson@msn.com</a></td>
<td>Yes</td>
<td>DRA/DRB</td>
</tr>
<tr>
<td>Baker, Bill</td>
<td>Consultant -TWI Engineer, litigation consultant in construction industry for nearly 40 years for DRBF member on 47 project, over 20 as Chair.</td>
<td>Anywhere in California</td>
<td>(707) 942-0700</td>
<td><a href="mailto:nbaker@blueprint.net">nbaker@blueprint.net</a></td>
<td>Yes</td>
<td>DRA/DRB</td>
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<tr>
<td>Bauer, Carl F.</td>
<td>60 years of experience in construction industry, including 15 years as a consultant's representative.</td>
<td>Anywhere in California</td>
<td>(916) 944-2143</td>
<td><a href="mailto:cbauer@blueprint.net">cbauer@blueprint.net</a></td>
<td>Yes</td>
<td>DRA/DRB</td>
</tr>
<tr>
<td>Carlson, William</td>
<td>DRBF member on 59 projects in heavy highway, marine, and building construction.</td>
<td>Escondido, CA</td>
<td>(619) 791-2011</td>
<td><a href="mailto:wpcarl@wpcarl.net">wpcarl@wpcarl.net</a></td>
<td>Yes</td>
<td>DRA/DRB</td>
</tr>
<tr>
<td>Dockery, David</td>
<td>Attorney, Construction Law, Arbitrator for AAB, DUS, PHAG.</td>
<td>Lives in Mill Valley</td>
<td>(415) 605-2541</td>
<td><a href="mailto:glenn.dockery@gmail.com">glenn.dockery@gmail.com</a></td>
<td>Yes</td>
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<td>Graham, Bob</td>
<td>9 years of experience in design, construction, traffic engineering, and building construction for 15 years with CAlMAB, 5 years with HUD - Service on 7 DRBF projects.</td>
<td>Anywhere in California</td>
<td>(925) 607-4115</td>
<td><a href="mailto:graham@network.net">graham@network.net</a></td>
<td>Yes</td>
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<tr>
<td>Lewis, Richard</td>
<td>3 years of experience, including 3 years with CAlMAB, 5 years on public works projects for 12 agencies.</td>
<td>Anywhere in California</td>
<td>(619) 630-6309</td>
<td><a href="mailto:rlawson@wpcarl.net">rlawson@wpcarl.net</a></td>
<td>Yes</td>
<td>DRA/DRB</td>
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<tr>
<td>McDowell, Charles</td>
<td>25 years of experience - DRBF member on 17 projects in heavy industry, including 15 years as a consultant's representative.</td>
<td>Livermore, CA</td>
<td>(925) 251-4630</td>
<td><a href="mailto:gregmcdowell@bigband.net">gregmcdowell@bigband.net</a></td>
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<td>Reading, Ron</td>
<td>15 years of experience in heavy highway construction with an extensive background in project management.</td>
<td>Anywhere in California</td>
<td>(925) 830-4131</td>
<td><a href="mailto:ronreading@msn.com">ronreading@msn.com</a></td>
<td>Yes</td>
<td>DRA/DRB</td>
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<tr>
<td>Thomas, Hugh</td>
<td>15 years of experience in construction project management.</td>
<td>Anywhere in California</td>
<td>(503) 873-0700</td>
<td><a href="mailto:thomashugh@comcast.net">thomashugh@comcast.net</a></td>
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**Note:**
- Updated 12/23/09
- **R** - Responded to SFPUC/CMB Survey
- Sources: Dispute Resolution Board Foundation (DRBF), Caltrans, American Arbitration Association (AAA), JAMS and Contractor Associations (AOC, EBCA)
DRA Three-Party Agreement, Division 0 Specification
Section 00 73 10/A/DRA/TPA

attachment 025 – 2
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DOCUMENT 00 73 10/A/DRA/TPA

CITY AND COUNTY OF SAN FRANCISCO

DISPUTE RESOLUTION ADVISOR
THREE-PARTY AGREEMENT

This Agreement, dated for convenience as of the ______ day of ______, 20___, 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 individuals:
______________________________________________________ (the "TPA").

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 00900/DRA, implementing a Dispute Resolution Advisor procedure for the Project (the "DRA Specification").

C. The TPA has been selected in accordance with the DRA Specification.

AGREEMENT

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

1. Compliance with Specification. The TPA 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 TPA shall be compensated for his/her individual services as TPA 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 billed rate shall be routine office expenses, such as secretarial, administrative, report preparation, telephone, computer, and internet communications.

3. Additional Compensation. Not included in the billed 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 any written communications may be billed at cost.

4. Invoices. The TPA shall submit to the Contractor invoices for work completed (a) not more than once per month, (b) based on the agreed billing rate and conditions set out in the DRA Specification, 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 during the invoice period.

5. Confidentiality. The TPA shall not divulge any information acquired during TPA activities without obtaining prior written approval from the City and the Contractor.

6. Recordkeeping. The TPA 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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Attachment 025 – 2

DRA Three-Party Agreement, Division 00 Specification
Section 00 73 10/A/DRA/TPA

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 90 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, his/her 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. Inspecting 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 UTILITIES COMMISSION

BY: ____________________________
Name:
Title:

[CONTRACTOR]

BY: ____________________________
Name:
Title:

DRA

BY: ____________________________

Approved as to form:
DENNIS J. HERRERA
City Attorney

BY: ____________________________
Deputy City Attorney

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00800/DRA/TPA - 1

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# Revision Control Log

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