

## SECTION 01 31 34

## APPENDIX A: THREE-PARTY FACILITATOR 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 Department of Public Works, \_\_\_\_\_ (the "Contractor"), and the following individual: \_\_\_\_\_ (the "Facilitator").

**Recitals**

**A.** The City, by and through its Department of Public Works, 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 Section 01 31 33, Partnering Requirements, implementing a Partnering Facilitation procedure for the Project (the "Partnering Specification").

**C.** The Partnering Facilitator has been selected in conformance with the Partnering Specification.

**Agreement**

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

**1. Compliance with Specification.** The Facilitator agrees to be bound by the terms of the Partnering Specification and to perform the required duties strictly as set forth in the Partnering Specification. The Partnering Specification is incorporated here by reference as if fully set forth.

**2. Compensation.** The City and the Contractor agree that the Facilitator shall be compensated for his/her individual services as Facilitator 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 and time spent in Partnering Workshops. 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 may be billed at cost.

**4. Invoices.** The Facilitator 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 Facilitator shall not divulge any information acquired during Partnering activities without obtaining prior written approval from the City and the Contractor.

**6. Recordkeeping.** The Facilitator 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.

**7. Assignment.** No party to this Agreement shall assign any duty established under this Agreement or the Partnering Specification.

**8. Termination.** This Agreement may be terminated only by mutual agreement of the City and the Contractor at any time upon not less than 10 days written notice to the Facilitator. If the Facilitator 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 Partnering Specification. This Agreement shall be amended to indicate the member replacement.

**9. Legal Relations.** The parties to this Agreement expressly acknowledge that the Facilitator, in the performance of his or her duties under this Agreement and the Partnering Specification, is acting in the capacity of an independent agent and not as an employee of the City or the Contractor. The Facilitator shall not participate in any dispute proceedings relating to the Contract or the Project. The City and Contractor release the Facilitator from any and all liability, claims, demands, actions and causes of action arising out of or resulting from partnering for the project. 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 Facilitator.

**10. Jurisdiction and Venue.** Disputes among the City, the Contractor, and the Facilitator 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 Facilitator hereby consents to the personal jurisdiction of the California Superior Court, County of San Francisco.

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

[CONTRACTOR]

BY: \_\_\_\_\_  
Name:  
Title:

FACILITATOR

BY: \_\_\_\_\_

Approved as to form:  
DENNIS J. HERRERA  
City Attorney

BY: \_\_\_\_\_  
Deputy City Attorney

END OF SECTION