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Alternative Dispute Resolution (ADR)

October 1996

April 1997, October 1999

Recommendations:

In an effort to minimize the number of construction dispute claims going to the court system, it is recommended that the architect suggest to the owner the advantages of using ADR to settle all of the project disputes and request that he or she select one of the following options that is preferred. This preference shall be incorporated in the project specifications General and Supplemental Conditions.

OPTION #1

PARTNERING. The owner intends to encourage the foundation of a partnering relationship with the contractor and its subcontractors. This partnering relationship will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance, intended to achieve completion within budget, on schedule, and in accordance with the plans and specifications.

This partnering relationship should involve all major parties and participation will be totally voluntary. Any cost associated with effectuating partnering will be agreed to by both parties and will be shared equally with no change in contract price. To implement this partnering initiative, it is anticipated that within 60 days of Notice to Proceed, the contractor's on-site project manager and the owner's on-site representative will attend a partnering development seminar.

This seminar will be followed by a team-building workshop to be attended by the contractor's key on-site staff and the owner's personnel. Follow-up workshops will be held periodically throughout the duration of the contract as agreed to by the contractor and owner.

If partnering fails to settle a dispute, then mediation shall be the next step toward a remedy.

MEDIATION. If a dispute arises out of or relates to this contract, or breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle under the American Arbitration Association's Construction Industry Mediation Rules before having recourse to binding arbitration.

If mediation fails to settle a dispute, the binding arbitration shall be the final remedy.

BINDING ARBITRATION. Any dispute, controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration

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administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgement on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

OPTION #2

DISPUTE REVIEW BOARD. A Dispute Review Board (DRB) consists of three members selected and approved by both the contractor and the owner, who are experienced with the type of work involved, who are respected by their peers and who are neutral. They visit the job regularly during construction and are kept advised regarding progress. When disputes arise, the DRB is able to recommend settlement quickly, before adversarial attitudes can grow and harden.

The DRB's function is to hear disputes in an informal and communicative atmosphere and to provide recommendations for timely resolution. The DRB acts quickly to resolve disputes before the parties adopt rigid positions leading to adversarial relationships.

The DRB does not usurp the owner's authority to direct the work as provided in the contract. The role of the DRB is to provide an independent assessment on the merits of the dispute.

The critical element in the DRB process is selection of members who can be depended on to consider objectively all sides of the issue and to serve both parties equally and impartially.

Although the recommendations of the DRB are not binding on any party, the parties will thoroughly consider and place great significance on them and in most instances will accept the findings of an impartial, respected panel. Should such further proceedings as arbitration become necessary, the recommendations of the DRB are admissible as evidence.

These procedures shall apply whenever the parties to a construction contract have acted in accordance with the Dispute Review Board Procedures of the American Arbitration Association.

If the Dispute Review Board fails to settle a dispute, then mediation shall be the next step toward a remedy.

MEDIATION. If a dispute arises out of or relates to this contract, or breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules before having recourse to binding arbitration.

If mediation fails to settle a dispute, then binding arbitration shall be the final remedy.

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BINDING ARBITRATION. Any dispute, controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator/arbitrators may be entered in any court having jurisdiction thereof.

OPTION #3

MEDIATION. If a dispute arises out of or relates to this contract, or breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules before having recourse to binding arbitration.

If mediation fails to settle a dispute, then binding arbitration shall be the final remedy.

BINDING ARBITRATION. Any dispute, controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator/arbitrators may be entered in any court having jurisdiction thereof.

OPTION #4

EXPEDITED ADJUDICATION. If a dispute involves essentially a single issue of interpretation or fact, an Expedited Procedure will be employed, which is designed to be quick and inexpensive. This procedure is conducted according to special rules that are published by the Private Adjudication Center, Inc. Expedited Adjudication can be either binding or non-binding, depending on what the parties agree to.

MEDIATION. If a dispute arises out of or relates to this contract, or breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation administered by the Private Adjudication Center through its Construction Industry Dispute Resolution Service before having recourse to binding arbitration.

If mediation fails to settle a dispute, then binding arbitration shall be the final remedy.

PRIVATE ADJUDICATION. Any dispute, controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the Private Adjudication Center, Inc., under its Construction Industry Dispute Resolution Service, and judgment on the award rendered by the private judge(s) will be binding on both parties.

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DOCUMENTS:

PARTNERING – Obtain from the Associated General Contractors of America

333 John Carlyle Street, Suite 200
Alexandria, Virginia 22314
AGC publication #1205

DISPUTE REVIEW BOARD – AAA Dispute Review Board Procedures

Obtain from the American Arbitration Association
428 East Fourth Street
Suite 300
Charlotte, NC 28202
704-347-0200

MEDIATION – AAA Construction Industry Arbitration Rules

Obtain from the American Arbitration Association
428 East Fourth Street
Suite 300
Charlotte, NC 28202
704-347-0200

BINDING ARBITRATION – AAA Construction Industry Arbitration Rules

Obtain from the American Arbitration Association
428 East Fourth Street
Suite 300
Charlotte, NC 28202
704-347-0200

PRIVATE ADJUDICATION – The Construction Industry Dispute Resolution Service

The Private Adjudication Center, Inc.
c/o Duke University School of Law
Durham, NC 27706
919-493-7770

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This recommendation is the result of considerable discussion and deliberation by the Architect and General Contractor members of the Joint Cooperative Committee of AIA North Carolina and the Carolinas AGC. While its provisions are not binding on individual Architects or General Contractors, the committee believes that adherence to the recommendations will benefit the Owner and the Construction Industry in general.