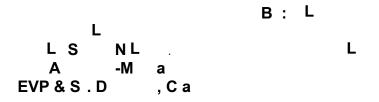
2022 Surety Bonding and Construction Risk Management Conference

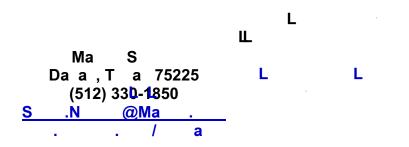
Learn more at risk.agc.org

Taming the Multi-Party Construction Dispute in Mediation



THIS PAPER WAS WRITTEN IN CONJUNCTION WITH A BREAKOUT SESSION AT AGC'S 2022 SURETY BONDING AND CONSTRUCTION RISK MANAGEMENT CONFERENCE.





Ρ

- •\$ U%#\$("#\$%" .#\$%: .##+\$4&+:()*+7\$ J*+%)2#.\$(")%\$\$=+\$-+\$)+9, #.%*+\$:*+4#.#+:#\$.**1\$%#(()+'3\$-\$, .#%#+(-()*+\$<0\$-\$%:"#2&/)+'\$#;, #.(\$-(\$*+#\$#+2\$*4\$("#\$:*+4#.#+:#\$.**1\$:-+\$"-.2/0\$<#\$.#-27\$8)("\$%"-.#\$%:.##+\$&%#23\$)(B%\$.)'"(\$&,\$ ("#.#\$4.*+(\$-+2\$:#+(#.\$-+2\$"-.2\$(*\$)'+*.#7\$>-%(#.\$("#\$,.*:#%7\$>-+0\$-+\$ #;,#+%)?#\$C*6#.C*)+(\$,.#%#+(-()*+\$+#?#.\$'*(\$&%#2\$<#:-&%#\$("#\$/-60#.\$:*&/2+B(\$4)'&.#\$*&(\$"*6\$(*\$&%#\$("#\$%"-.#\$%:.##+\$4&+:()*+\$*+\$N**17\$ \$
- •\$ K.)+'\$-\$%-+26): "7\$V*\$1*.#\$<-2\$1#2)-()*+\$/&+: "#%\$%#.?#2\$<0\$("#\$1#2)-(*.\$)+\$)+9, #.%*+\$%#%%)*+%7\$\$
- •\$ 8 ")/#\$("#\$2-0%\$*4\$:-(:")+'\$("#\$1#2)-(*.\$*+\$("#\$6-0\$(*\$("#\$:*44##\$<-.\$1-0\$ <#\$*?#.3\$("#\$%-1#\$:-+\$<#\$-::*1,/)%"#2\$(".*&'"\$:"-(\$*.\$(#;(7\$8#\$<*("\$4)+2\$ ("#%#\$4#-(&.#%\$?#.0\$"#/,4&/\$-+2\$*4(#+()1#%\$:-+\$,.*?)2#\$-\$'&)2#\$(*\$("#\$ 1#2)-(*.\$*4\$6"-(\$<&((*+%\$(*\$,&%"7\$
- ●\$ J*+%)2#.\$: 1 #*\$-, , #-.-+: #%\$<0\$4*/5%\$0*&\$1)' "(\$+*(\$*("#.6)%#\$<.)+'\$(*\$-+\$)+9, #.%*+\$1#2)-()*+\$@*&\$1)' "(\$+*(\$4/0\$-+\$#;, #+%)?#\$#;, #.(\$(*\$-\$1#2)-()*+\$-+2\$)+:&.\$-\$4&//\$2-0B%\$4##3\$<&(\$6)("\$?).(&-/\$1#2)-()*+3\$("#0\$:-+\$#44):)#+(/0\$, -.():), -(#\$<.)#4/0\$4.*1\$-4-.7\$</p>
- ●\$ @*&\$ -.#\$ +*\$/*+'#.\$:*1,#//#2\$(*\$/**5\$4*.\$-\$1#2)-(*.\$6"*\$6*.5%\$)+\$0*&.\$ %-1#\$:)(07\$=4\$0*&\$-.#\$/**5)+'\$4*.\$-\$1#2)-(*.\$6)("\$-\$,-.():&/-.\$#;,#.()%#3\$("#\$:"*%#+\$1#2)-(*.\$:*&/2\$*44):#\$-+06"#.#\$)+\$("#\$6*./2\$-+2\$0*&\$6*+B(\$)+:&.\$ (.-?#/\$#;,#+%#%7\$
- •\$ G: "#2&/)+'\$)%\$#-%)#.7\$W*.\$-\$4&//\$2-0\$*4\$)+9, #.%*+\$1#2)-()*+3\$/-60#.%\$-+2\$ 1#2)-(*.%\$-.#\$'*)+'\$(*\$"-?#\$(*\$4)+2\$-\$1#2)-()*+\$2-0\$6)("\$+*\$1#2)-()*+%{("#\$ 2-0\$<#4*.#\$*.\$-4(#.\$)4\$-+0\$-.#\$(.-?#/)+'\$4.*1\$*&(\$*4\$(*6+7\$X).(&-/\$1#2)-()*+\$ 1-5#%\$4*.\$1*.#\$-?-)/-</#\$2-0%\$4*.\$0*&.\$4-?*.)(#\$1#2)-(*.7\$ \$
- •\$ I#(\$ ("#\$ 1#2)-(*.\$ "#/,\$ 0*&\$ 2#(#.1)+#\$ 6 "#("#.\$)+9, #.%*+\$ *.\$?).(&-/\$ 1#2)-()*+\$)%\$-, ,.*,.)-(#7\$\$
- \$

8 # \$%, # + (\$("#\$4).%(\$1 * + ("%\$*4\$("#\$, -+2#1):\$)+\$?).(& -/\$1 #2) - ()*+3\$2# - ("/0\$-4. -)2\$*4\$ J ") + #% + -2\$Y &%) - +\$# - ?#%2.*, #.%3\$ N**1 \$K*1 <) + '3\$ - +2\$5##,) + '\$*.2#.\$) + \$("#\$ <.#-5*&(\$.**1 %7\$ KO\$ Z*23\$ +*<*20\$ 6-%\$ '<math>#(()+'\$)+\$("#\$%#%) *+\$*.\$1*?) + '\$("\$+\$ -+0\$.**1\$ ("-(\$ 6#\$ 2)2+B(\$,&(\$ ("#1\$)+7\$ H?#.\$ () 1 #3\$ 6#\$.#-/)D#2\$ ("-(\$ ("#\$ /-:5\$ *4\$ 4.-(#.+)D-()*+\$("-(\$ & & & -//0\$ 6#+(\$*+\$)+\$-\$1 & /()9, -.(0\$:-%#3\$ 6 "#.#\$/*(%\$ * 4\$4*/5%\$ -.#\$

8 #\$" - 2\$<##+\$(")+5)+ '\$ - <* &(\$" * 6\$(*\$) 1 ,.*?#\$("#\$,.*: #%%\$6 "#+\$+#: #%%)(0\$<#: - 1 #\$ ("#\$ 1 * ("#.\$ *4\$)+?#+()*+7\$G(#?#\$ 6 - %\$ 1 #2)-()+ '\$ -\$ [OP\$ "* 1 #* 6+#.%\$\$: - %#\$?%7\$ \O\$, -.(0\$ 2#4#+2-+(\$: *+%(.&:()*+\$ 2)%, &(#\$)+\$ V#6\$ >#;):*7\$ Q#\$ "-2\$ 1 *.#\$ ("-+\$ OPP\$, -.():), -+(%\$*+\$("#\$N**1\$,/-(4*.1\$-(\$*+#\$,*)+(7\$T?#.0\$, -.(0\$"-2\$1*.#\$("-+\$*+#\$ -((*.+#0\$7\$7\$7\$-+2\$#-:"\$*4\$("*%#\$-((*.+#0%\$"-2\$1*.#\$("-+\$*+#\$:/)#+(\$7\$7\$7\$<&(\$("*%#\$ 6#.#\$2)44#.#+(\$:/)#+(%\$("-+\$("#\$*+#\$("#0\$%"-.#2\$6)("\$("-(\$4).%(\$,-.(07\$E+2\$%*1#\$*4\$ ("#\$ - 2\&%(#.%\$" - 2\$4*&.\$*.\$4)?#\$2)44#.#+(\$)+%&.#2%\$)+\$("#\$: -%#7\$G*3\$#?#.0\$<.#-5*&(\$.#F&).#2\$ G(#?#\$ *.\$ ")%\$: *91 #2)-(*.\$ (*\$ (.-:5\$ 2*6+\$ ("#\$.)' "(\$ -2\&%(#.%\$ -+2\$.)' "(\$ /-60#.%\$-+2\$1*?#\$("#1\$(*\$-\$<.#-5*&(\$.**17\$=(\$%/*6#2\$2*6+\$("#\$,.*:#%%\$-+2\$)(\$ 5#, (\$%* 1 #\$*4\$("#\$/-60#.%\$-+2\$-2\&%(#.%\$4.* 1 \$:*//-<*.-()+'7\$Q#\$4)+-//0\$'-?#\$&, \$*+\$ (.0)+'\$(*\$ 1 *?#\$, #*, /#\$") 1 %#/4\$ -+2\$ ' -?#\$ #?#.0*+#\$: *9" *%(\$,.)?)/# '#%\$ *+\$N** 17\$! "#0\$" - 2\$(*\$,.*1)%#\$+*(\$(*\$<-.'#\$)+(*\$.**1%\$("#0\$2)2+B(\$<#/*+'\$)+3\$<&(\$*("#.6)%#\$:*&/2\$ 1 *?#\$("# 1 %#/?#%\$ -+2\$#?#.0*+#\$)+\$("#).\$.** 1 \$(*\$ -+0\$*("#.\$<.#-5*&(\$.** 1 \$ ("#0\$6-+(#27\$!"#0\$:*&/2\$%##\$6"*\$6-%\$)+\$6"):"\$<.#-5*&(\$.**1%\$-+2\$6"#.#\$("#\$ 1#2)-(*.\$6-%7\$=(\$6*.5#2\$/)5#\$-\$:"-.17\$G&22#+/03\$6#\$6#.#\$1#2)-()+'\$-+2\$+*(\$ 2).#:()+'\$(.-44):7\$]#-/%\$6#.#\$<#)+'\$1-2#\$*+\$("#).\$*6+7\$!").(09%#?#+\$*4\$("#\$ 2#4#+2-+(%\$ -+2\$ [OP\$,/-)+()44%\$ %#((/#2\$ ("-(\$ 2-03\$ -+2\$ ("#\$.#%(\$ %#((/#2\$ *+\$ -\$ 1#2)-(*.8%\$,.*,*%-/\$6)(")+\$-\$6##57\$

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G)+:#\$("#+3\$*+\$1*%(\$:-%#%3\$6#B?#\$*4(#+\$<##+\$')?)+'\$-//\$*4\$("#\$-((*.+#0%\$:*9"*%(\$,.)?)/#'#%\$-+2\$:.#-()+'\$#;(.-\$<.#-5*&(\$.**1%\$6"#.#\$("#0\$:-+\$1)+'/#\$-+2\$:*//-<*.-(#7\$8#\$"-?#\$<.#-5*&(\$.**1%\$+-1#2\$L!"#\$^)(:"#+3M\$("#\$LQ-//6-03M\$-+2\$ ("#\$L]#4#+%#\$E((*.+#0\$I*&+'#

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 $\begin{array}{l} G^* 1 \# \$ 1 \& / (9, -.(0\$: -\% \# \% \$: -+\$ < \# + \# 4)(\$ 4. * 1 \$: *91 \# 2) - (*.\%7\$ 8 \# 8? \# \$ 2 * + \$ (" - (\$ 6)(" \$) + :. \# - \%) + ' \$ 4. \# F \& \# + : 07\$ 8)(" \$ [__\$ *.\$ OP\$, -.() \# \% \%)(() + ' \$ -. * \& + 2\$ * + \$ (" \# $ 2 - 0\$ * 4\$ 1 \# 2) - () * + 3\$ 6 -)() + ' \$ (* \$?) \%)(\$ 6)(" \$ (" \# \$ 1 \# 2) - (*.3\$)(\$ \% , \# 2\% (") + ' \% \& , \$ - + 2\$ 5 \# , \% (" \# \$, -.() \# \% 4. * 1 \$(") + 5) + ' \$(" \# 0\$ " - ? \# \$ < \# + \$ 4 * . ' *((\# + 7\$ = 2/\# \$/ - 60 \# . \% \$ " - + 2\% * 4(\# + \$ (" \# \$ 2 + 1) \# 2) / \% \% 6 * .5\% " * , 7\$ I \# (\$ (" \# \$: " * \% + \$ 1 \# 2) - (*.3\% \& ' ' \# \% (\$, . * : \# \% \% $ - + 2\$,):5\$ (" \# \% * 1 * 2) - (*.5\% \% * 4\% * * 1 \# 2) - (*.5\% \% * 4\% * 1 \# 2) - (*.5\% \% * 4\% * 1 \# 2) - (*.5\% \% * 4\% \% * 4\% * 1 \# 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) - (*.5\% \% * 4\% * 1 * 2) + (*.5\% * 4\% * 1 * 2) + (*.5\% * 4\% * 1 * 2) + (*.5\% * 4\% * 1 * 2) + (*.5\% * 4\% * 1 * 2) + (*.5\% * 4\% * 1 * 2) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 4\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% * 1) * (*.5\% *$

("#\$,-.()#%\$-.#\$<#((#.\$(*\$%:"#2&/#\$("#\$.#%&1#2\$*.\$-2A*&.+#2\$1#2)-()*+\$-\$1*+("\$/-(#.7\$\$

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 $\begin{array}{l} {\sf E}//*\,6\$("\#\$\,1\,\#2)-(*.\$(*\$"\#/,\$0*\&\$2\#\%)'+\$-\$,.*:\#\%\%\$-+2\%:"\#2\&/\#\$("-(\$<\#\%(\$\%\&)(\%\&("\#\$\,2)\%,\&(\#7\$W*.\$("*\%\#\$\,6"*\$-.\#\$)+(\#.\#\%(\#2\$)+\$("\#\$'.*6)+'\$\,1*?\#\,1\,\#+(\$(*\$)+?*/?\#\$("\#\$\,1\,\#2)-(*.\$\#-./)\#.\$)+\$("\#\$,.*:\#\%\%\$)+\$:*\,1,/\#;\$:-\%\#\%3\$\,0*\&\$\,1-0\$<\#\$)+(\#.\#\%(\#2\$)+\$-\$\,1*?\#\,1\,\#+(\$:-//\#2\&Z\&)2\#2\&J"*):\#7\$J"):-'*\$>\#2)-(*.3\&C-\&/\$I\&.)\#3\$:*)+\#2\$("\#\$+-\,1\,\#\$(*$2\#\%:.)<$

 $1 # - +\%3\L 8 #\$(.)#2\$(*\$: -//\$("# 1 3\S < &(\$("#.#B\%\$ - \$(6*9"*\&.\$() 1 #\$2)44#.#+:#\$ - +2\$" #B\%d\%"#B\%\$ - ($ /&+: "3$ *+$ ("#$ (.-)+3$ *.$ 6"-(#?#.7M$ E'-)+3$ N** 1 9%(0/#$ 1 #2)-()*+%$"-?#$ 1 -2#$(")%$/#%%$*4$-$,.*</# 1 3$<&($6#$%##$)($.#%&1)+'$-%$ 6#$<#')+$(*$1 *?#$<-:5$(*$)+9, #.%*+$ 1 #2)-()*+%7$$

- \$
- •\$ =4\$("#.#\$)%\$%* 1 #*+#\$6"* 1 \$*("#.%\$<#/)#?#\$%"*&/2\$<#\$, -.():), -()+'3\$<&(\$6"*\$ %) 1, /0\$: -++*(\$, -.():), -(#3\$2)%-. 1 \$("#).\$+*()*+%\$("-(\$("#\$, #.%*+\$)%\$%(-0)+'\$ -6-0\$(*\$("6-.(\$("#\$, .*:#%%\$<0\$"-?)+'\$("#\$-<%#+(\$, #.%*+\$:*1 1 &+):-(#\$ 2).#:(/0\$6)("\$("#\$ 1 #2)-(*.\$)+\$-2?-+:#\$*4\$("#\$ 1 #2)-()*+7\$=(\$:-+\$<#\$?#.0\$ #44#:()?#\$6"#+\$6#\$-.#\$-</#\$(*\$%-03\$L=\$%, *5#\$(*\$("#\$-2\&%(#.\$ 1 0%#/4\$/-%(\$ 6##57\$Q#\$*.\$%"#\$:-++*(\$<#\$"#.#\$(*2-03\$<&(\$=\$6-%\$-</#\$(*\$2#(#. 1)+#\$("-(\$"#\$ 2*#%3\$)

T O S

! "#\$#91-)/\$ ' *#%\$ *+\$(*\$-%5\$4*.\$1#2)-() *+\$%(-(#1#+(%\$(*\$<#\$(&.+#2\$)+\$-(\$/#-%(\$ *+#\$ 6##5\$,.)*.\$(

1 # 2) - (*.\$ 6) / / \$:* 1 # \$ < 07\$ H4(# + 3\$)(\$ # /) 1) + - (# % ("# \$ + # # 2\$ 4*.\$ # - ./0\$:- &: &% # % \$ - ./(* ' # ("#.7\$)))

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E4(#.\$6#\$" - ?#\$#; : &%#2\$("#\$,/-)+()443\$6#\$-%5\$-//\$("#\$2#4#+2-+(%\$(*\$%():5\$-.*&+27\$8#\$ -%5\$("#13\$-%\$-\$'.*&,3\$6"-(\$("#0\$(")+5\$("#\$:-%#\$6)//\$a*.\$%"*&/2b\$%#((/#\$4*.7\$!"#.#8%\$ &%&-//0\$ -\$4#6\$6"*\$%-03\$L!"#0\$%"*&/2\$ -, */*')D#\$ -+2\$.#/#-%#\$&%\$-//\$+*67M\$E+2\$ ("#.#\$ - .#\$ -\$ 4#6\$ -/-.1)%(%\$ 6 " *\$ (")+5\$)(\$ 6)//\$ (-5#\$ -\$ 4*.(&+#7\$ T?#+(&-//03\$ 6#\$ - .#\$ &%&-//O\$ - </#\$(*\$%(##.\$("#\$'.*&,\$(*\$-\$:*+%#+%&%\$*4\$6"-(\$("#O\$(")+5\$)(\$1)'"(\$(-5#\$ a6 "#("#.\$*.\$+*(\$-+0\$*4\$&%\$"-?#\$-+0\$%#+%#\$("-(\$("#\$,/-)+()44\$6*&/2\$-::#,(\$)(b7\$1#(8%\$ %-0\$ ("-(\$ ("#0\$ "-?#\$ -//\$ -'.##2\$ ("-(\$ ("#\$,/-)+()44\$ 6 -+(%\$ e [_\$ 1)//)*+3\$,.*<-</0\$)%\$ /#')()1 - (#/0\$#+()(/#2\$(*\$-\$/)((/#\$*?#.\$eO\$1)//)*+3\$<&(\$" - %\$%*\$1 &: "\$)+?#%(#2\$)+\$/-60#.%\$ -+2\$#;,#.(%\$7\$7\$7\$-+2\$"*1#\$:*&.(\$-2?-+(-'#\$7\$7\$7\$("-(\$)(\$)%\$/)5#/O\$("-(\$("#\$,/-)+()44\$ 6 * &/2\$ 6 - /5\$ - 6 - 0\$ - (\$ - +0\$ + & 1 < #.\$/#%%\$(" - +\$e\\$ 1)//)* +7\$Q*. #4&//03\$("#\$ - %%# 1 </#2\$ 2#4#+2-+(%\$-'.##\$("-(\$6#\$"-?#\$-//\$("#\$2#4#+2-+(%\$)+\$("#\$.**1\$*.\$*+\$("#\$N**1\$ ("-(\$+##2\$(*\$.-)%#\$("-(\$,*(7\$=(B%\$A&%(\$-\$F&#%()*+\$*4\$"*6\$6#\$6)//\$.-)%#\$)(7\$K#4*.#\$6#\$ %#+2\$("#1\$*44\$(*\$("#).\$%#, -.-(#\$.**1%\$7\$7\$7\$*.\$:-//\$("#1\$*+#\$-(\$-\$()1#\$)+(*\$("#\$ L,.)+:), -/8%\$*44):#\\\\$7\$7\$7\$6#\$-%5\$("#1\$(*\$(-5#\$*&(\$-\$,)#:#\$*4\$, -, #.\$-+2\$(#-.\$)(\$)+(*\$ (").2%7\$!")%\$)%\$-+\$-1-D)+'/0\$"-.2\$-%%)'+1#+(\$4*.\$/-60#.%3\$6"*\$6-+(\$(*\$5+*6\$)4\$)(\$)%\$ -::#,(-</#\$(*\$&%#\$(".##\$,)#:#%\$*4\$,-,#.3\$*.\$)4\$)(\$1 &%(\$<#\$4.*1 \$*+#\$,)#:#\$*4\$,-,#.\$7\$ 7\$7\$*4\$)4\$("#0\$:-+\$4*/2\$*+#\$,)#:#\$(6):#\$-+2\$2)%:-.2\$("#\$4*&.("\$,)#:#7\$=+\$-+0\$#?#+(3\$)(\$ ')?#%\$("#1\$%*1#(")+'\$(*\$2*\$(*\$(-5#\$("#).\$1)+2%\$*44\$("#\$4-:(\$("-(\$("#0\$6*+B(\$%##\$&%\$ 4*.\$-+*("#.\$:*&,/#\$*4\$"*&.%\$)4\$6#\$%(-.(\$?)%)()+'\$6)("\$#?#.0*+#7\$8#\$-%5\$("#1\$(*\$ 6.)(#\$("#\$+&1 <#.%\$[3\$O3\$-+2\$f\$*+\$("#\$,)#:#%\$7\$7\$7\$-+2\$("#).\$:/)#+(8%\$+-1#\$*+\$,)#:#%\$ [\$-+2\$07\$K0\$(")%\$,*)+(3\$-<*&(\$-\$(").2\$"-?#\$'*((#+\$/*%(\$*.\$+##2\$1*.#\$)+%(.&:()*+%7\$! "#0\$#?#+(&-//0\$-//\$:-(:"\$&,7\$\$

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 $\begin{aligned} H+\$, -, \#.\$ [3\$6"): "\$" - \$\$("#).\$: /)#+(8\%\$+-1 \#3\$6\#\$-\%5\$("#1\$(*\$')?\#\$\&\%\$-+\$L*, \#+)+'\$ \\ *44\#. M\$("-(\$\#;,.\#\%\%\#\%("#).\$:/)#+(\%\$\$.)'"(\#*\&\%\$)+2)'+-()*+\$-(\$<\#)+'\$\%\&\#27\$=(\$:-+\$<\#) \\ - \$\%/*6\$-\%\$("#0\$6-+(7\$!")\%)\%\$("\#\$L4k:5$0*&M\$**44#.$("-(\$6\#B.\#\$\&\%\&-//0$:*1,\#//#2$(*$ %, #+2$("#1$4).\%($.*&+2$*4$?)%)(\%$, &(()+'$(*'#("#.7$Q-?)+'$2*+#$("-(3$6#$-\%5$("#1$(*$ 6-2$("*\%#$\"##(\%$*4$, -, #.$&, $-+2$(".*6$("#1$-($&\% - \%)" - .2$-\%("#0$:-+7$!"#0$ /)5#$("-(7$=($.#/)#?#\$-$/)((/#$(#+\%)*+$-+2$'#(\%("-($4).\(7$$1Tf(&\)TjETQq5-44(0$)2(12589.92cm82540))) \\ \end{aligned}$

1 -5#\$, " *+#\$: -//%\$ (*\$%* 1 #*+#\$ 6)("\$#

" * &.%\$ 6 -)()+ ' \$ 4*.\$ ("#\$ 1#2)-(*.7¹¹\$ =(\$ -/%*\$ -//* 6%\$ 4*.\$ % 1 -//#.\$: - &: &%\$ %#%%)*+%\$ 6 "#.#\$("#\$, -.()#

$$\begin{split} & \mathsf{E}^{+} \cdot \mathsf{E}^{+} + \mathsf{E}$$

- •! ^+*6\$6"#+\$(*\$:-//\$()1#\$*&(7\$=4\$0*&\$-.#\$6*.+\$*&(\$-+2\$+*(\$1-5)+'\$0*&.\$<#%(\$ 2#:)%)*+%\$<#:-&%#\$*4\$)(3\$,&(\$*+\$("#\$<.-5#%7\$J-//\$()1#\$*&(7\$H("#.%3\$)+:/&2)+'\$ ("#\$1#2)-(*.3\$1-0\$&.'#\$0*&\$*+7\$]*+B(\$+#'*()-(#\$6"#+\$0*&\$:-++*(\$2*\$0*&.\$ <#%(\$6*.57\$
- \$
- •! ^##,\$)+\$1)+2\$6"-(\$-//\$:*-:"#%\$5+*67\$=(8%\$1&:"\$#-%)#.\$(*\$6)+\$("#\$'-1#\$)+\$ ("#\$4).%(\$"-/4\$("-+\$)+\$("#\$/-%(\$(6*\$1)+&(#%7\$=4\$0*&\$-.#\$<#")+2\$n\9m\$6)("\$(6*\$ 1)+&(#%\$(*\$'*3\$+*\$(6*91)+&(#\$2.)//\$)%\$'*)+'\$(*\$"#/,\$0*&7\$J-.#4&/\$,.#9 1#2)-()*+\$,.#,-.-()*+3\$("*&'"(4&/\$:*1,.*1)%#3\$-+2\$-\$4*:&%\$*+\$0*&.\$)+(#.#%(%3\$+*(\$0*&.\$,*%)()*+%3\$-//\$2-0\$/*+'\$6)//\$5##,\$0*&\$4.*1\$"-?)+'\$(*\$&%#\$ 0*&.\$(6*91)+&(#\$2.)/7\$
- \$
- •! T?#+\$)4\$)(\$"-%\$<#:*1#\$*<?)*&%\$("-(\$0*&\$:-+B(\$L6)+M\$*.\$("#\$:-%#\$6*+B(\$%#((/#3\$ 1-5#\$("#\$1*%(\$*4\$("#\$,/-0)+'\$()1#\$0*&\$"-?#\$-+2\$(")+5\$-<*&(\$("#\$+#;(\$ '-1#7\$=4\$0*&\$:-+B(\$<.)+'\$-<*&(\$-\$:*1,/#(#\$%#((/#1#+(3\$-.#\$("#.#\$%*1#\$)%%&#%\$("-(\$:-+\$<#\$.#%*/?#2r\$E.#\$("#).\$,.*:#2&.-/\$"&.2/#%\$("-(\$:-+\$<#\$ *?#.:*1#r\$J-+\$("#\$1#2)-(*.\$"#/,\$4-%")*+\$-+\$-/(#.+-()?#\$2)%,&(#\$.#%*/&()*+\$ %(.-(#'0q-.<)(.-()*+r\$V#&(.-/\$#?-/&-()*+r\$W&.("#.\$4-:)/)(-(#2\$+#'*()-()*+%r\$ T?#+\$("#\$,.*2&:()*+\$*4\$("-(\$*+#\$)+%&.-+:#\$,*/):0\$*.\$#;,#.(\$.#,*.(\$("-(\$ 0*&B?#\$<##+\$%(*+#6-//#2\$*+\$4*.\$("#\$,-%(\$+)+#\$1*+("%\$1-0\$"#/,7\$\$
- \$

>-+0\$-2?*:-(#%\$"-?#\$'*((#+\$/-D0\$-+2\$#;,#:(\$("#\$ 1 #2)-(*.\$-+2\$("#\$ 1 #2)-()*+\$,.*:#%%\$(*\$2*\$-//\$("#).\$6*.5\$4*.\$("# 1 7\$!"#\$,-.()#%\$6"*\$-.#\$%&::#%%4&/\$-(\$ 1 #2)-()*+\$ 5+*6\$<#((#.7\$!"#0\$-.#\$("#\$*+#%\$6"*\$,

 $\begin{array}{l} C.\#,-.)+'\$-\$\%\#((/\#1\#+(\$2.-4(\$))\%\$-\$'*2\$(**/\$4*.\$-+0\$-2?*:-(\#\$-+2\$-\$'.\#-(\$-)2\$(*\$("\#\$+2)-(*.7\$!"\#\$1\#2)-(*.7\$!"\#\$1\#2)-(*.8\%)\$\%\%\#\$+2.2\%)+\#1\#+(\$*4\$-\$4\&//9</*6+\$\%\#((/\#1\#+(\$2*:&1\#+(\$))\%)\ast+\#\$*4\$("\#\$(**/\%)("-(\$:-+\$"\#/,\$:/*\%\#\$("\#\$+\#'*()-()*+\%7\$=(\$))\%)-+\$\#;:#//#+(\$,/-0$(*\$"-?#\$)+\$0*\&.\$(6*91)+&(\#\$2.)//7^{15} \end{array}$

Understand the Concept of a Mediator's Proposal and Have Your Client Prepared for It¹⁶

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8)("\$)+:.#-%)+'\$4.#F&#+:03\$6#\$4)+2\$("-(\$,-.()#%\$)+\$1#2)-()*+\$-.#+b(\$(.0)+'\$-%\$"-.2\$ -%\$("#0\$&%#2\$(*7\$8"#("#.\$("#0\$-.#\$/#(()+'\$("#\$1#2)-(*.\$2*\$1*.#\$*4\$("#\$6*.53\$ 6"#("#.\$("#\$.-(%\$"-?#\$'*((#+\$%1-.(#.\$.&++)+'\$(".*&'"\$("#\$1-D#3\$*.\$6"#("#.\$*.\$ +*(\$1#2)-(*.%\$-.#\$/*%)+'\$,-()#+:#\$6)("\$4-:)/)(-()?#\$,.*:#%%#%\$-+2\$-.#\$F&):5#.\$(*\$

*44#.\$ ("#).\$ *6+\$ *,)+)*+%3\$ 6#\$ 2*+8(\$ 5+*67\$ K&(\$ *&.\$,*//)+'\$ *4\$ #;,#.)#+:#2\$:*+%(.&:()*+\$ 1#2)-(*.%\$ %&''#%(%\$ ("-(\$ 1*.#\$ -+2\$ 1*.#\$:-%#%\$ -.#\$.#-:")+'\$)1,-%%#\$<&(\$-.#\$%()//\$<#)+'\$%#((/#2\$-(\$-<*&(\$("#\$%-1#\$.-(#\$<#:-&%#\$*4\$("#\$&%#\$*4\$ >#2)-(*.B%\$C.*,*%-/%7\$

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a-b\$E\$, #.%*+\$-,, *)+(#2\$(*\$4-:)/)(-(#\$-+\$-/(#.+-()?#\$2)%, &(#\$.#%*/&()*+\$,.*:#2&.#\$&+2#.\$(")%\$%&<:"-,(#.\$%"-//\$#+:*&.-'#\$-+2\$-%%)%(\$("#\$</pre> , -.()#%\$)+\$.#-:")+'\$-\$%#((/#1#+(\$*4\$("#).\$2)%,&(#\$<&(\$1-O\$+*(\$:*1,#/\$*.\$:*#.:#\$("#\$,-.()#%\$(*\$#+(#.\$)+(*\$-\$%#((/#1#+(\$ - ' .## 1 #+(7\$\$

=(\$)%\$:/#-.\$("-(\$("#\$1#2)-(*.\$:-++*(\$&+)/-(#.-//0\$<#:*1#\$-+\$-.<)(.-(*.\$-+2\$)%%&#\$-+\$ -6-.2\$*.\$*,)+)*+7\$K&(\$:*+%)2#.\$6"#("#.\$("#\$1#.#\$1-5)+'\$*4\$-\$,.*,*%-/\$1-0\$:*#.:#\$-+\$-'.##1#+(7\$J*+%)2#.\$("#\$2*6+%)2#%\$\$

- •! V*\$ 1 ((#.\$"*6\$ 1 +0\$ 6 0%\$("#\$ 1 #2) (*.\$ 1 0\$: *& : "\$("#\$, .* , *% /3\$)(\$)%\$*4(#+\$ %##+\$ - %\$ ("#\$ 1 #2) - (*.8%\$ *,)+) * +\$ * +\$ ("#\$ 1 #.)(%7\$ W. * 1 \$ (" - (\$, *)+(\$ 4*.6 - .23\$ ("#\$ 1#2)-(*.\$1-0\$<#\$%##+\$-%\$"-?)+'\$/*%(\$")%\$*.\$"#.\$)1,-.()-/)(07\$@*&\$1-0\$+*(\$<#\$ -</#\$(*\$&%#\$("#\$1#2)-(*.\$4*.\$-+0\$4&.("#.\$+#'*()-()*+%7\$
- •! ! "#\$ >#2)-(*.8%\$C.*, *%-/\$<#:*1#%\$-\$+#6\$-.()4):)-/\$<-..)#.\$(*\$%#((/#1#+(\$)4\$+*(\$ -::#,(#27\$8")/#\$*+#\$,-.(0\$1-0\$+*(\$6)%"\$(*\$1*?#\$-%\$4-.\$-%\$("#\$*("#.8%\$,-.(08%\$, *%)()*+3\$("#0\$(-5#\$("#\$?)#6\$("-(\$("#0\$-.#\$2-.+\$%&.#\$+*(\$'*)+'\$(*\$'*\$<#0*+2\$ 6 " - (\$("#\$ 1 #2) - (*.\$" - 2\$, .*, *%#27\$!")%\$)%\$*+#\$*4\$("#\$ 1 *%(\$%)'+)4): -+(\$2-+'#.%7\$ =4\$ ("#\$ >#2)-(*.8%\$ C.*, *%-/\$ 1)%%#%\$ ("#\$ 1 -.53\$ ("#\$ 1#2)-(*.\$ 1 -0\$ "-?#\$ 2*+#\$ 1 * .#\$" - . 1 \$(" - +\$ ' * * 27\$
- •! ! "#.#\$)%\$ -\$.#-/\$ 2-+ '#.\$ ("-(\$ *+#\$, -.(0\$ *.\$ -+*("#.\$ 6)//\$ -((#1,(\$ (*\$ &%#\$ ("#\$ >#2)-(*.8%\$C.*,*%-/\$-%\$#?)2#+:#\$*4\$-\$+#&(.-/\$*,)+)*+\$*+\$("#\$1#.)(%7\$8")/#\$("#\$ %(-(#1#+(%\$*4\$,-.()#%\$)+\$1#2)-()*+\$-.#\$-/6-0%\$(.#-(#2\$-%\$:*+4)2#+()-/3\$%*1#\$, -.()#%\$ -+2\$("#).\$:*&+%#/\$ -.#\$*4\$("#\$*,)+)*+\$*4\$6"-(\$("#\$1#2)-(*.\$6-%\$%-)2\$(*\$ ("#1\$)%\$+*(7\$!"&%3\$("#\$,*%%)<)/)(O\$*4\$-\$,-.(O3\$)+\$-+\$&+%&::#%%4&/\$>#2)-(*.8%\$ C.*, *% - /(%)(& - () + 3%, *%) < /0% - ((# 1, () + '%(*%) + (.*2& : #%("#%) > #2) - (*.8%%C.*, *% - /(%) + %#?)2#+:#\$)+\$-\$%&<%#F&#+(\$,.*:##2)+'\$7\$7\$7\$*.\$)+4/&#+:)+'\$-+*("#.\$1#2)-(*.\$)+\$-\$ %&<%#F&#+(\$1#2)-()*+7\$

W*.\$0*&.\$(6*91)+&(#\$2.)//3\$:*+%)2#.\$"-?)+'\$2*+#\$%*1#\$*.\$-//\$("#\$4*//*6)+'\$\$

- •! ! "#\$ >#2)-(*.8%\$C.*, *%-/3\$)+\$*&.\$*,)+)*+3\$)%\$+*(\$%*1#(")+'\$("-(\$:-+\$<#\$1-2#\$ 6)("*&(\$("#\$:*+%#+(\$*4\$-//\$("#\$,-.()#%7\$=4\$-+0\$,-.(0\$2*#%\$+*(\$6-+(\$("#\$1#2)-(*.\$ (*\$ 1 -5#\$ -\$, .* , *%-/3\$ *+#\$%" *&/2\$+*(\$<#\$ 1 -2#7\$G():5\$(*\$0*&.\$ '&+%\$)4\$0*&\$ - .#\$: *+:#.+#2\$("-(\$("#\$ 1 #2)-(*.\$ 1 -0\$ 1 -5#\$-\$,.*, *%-/\$("-(\$0*&\$6)//\$4)+2\$+*(\$*+/0\$ &+-::#, (-</#\$<&(\$-/%*\$1-0\$"&.(\$4&.("#.\$+#'*()-()*+%7\$@#%3\$0*&\$:-+\$-'.##\$(*\$ %##\$("#\$,.*,*%-/\$-+2\$%-0\$LV*3\\\$<&(\$("#\$+&1<#.%\$-.#\$*+\$("#\$(-</#\$-+2\$6)//\$"-?#\$ -+\$) 1 , -: (\$*+\$4&.("#.\$+#'*()-()*+%7\$
- •! ! #\$ >#2)-(*.\$ %" *&/2\$?#.0\$:-.#4&//0\$ 2#%:.)<#\$ ")%\$ *.\$ "#.\$,.*, *%-/\$ -%\$ <#)+'\$ %* 1 #(")+ '\$*("#.\$("-+\$-\$2#:)%)*+\$*+\$("#\$ 1 #.)(%7\$W*.\$*&.\$*6+\$(6*91)+&(#\$2.)//%3\$ 6#8?#\$.#"#-.%#2\$ "*6\$ 6#\$ 6)//\$:"-.-:(#.)D#\$ *&.\$..*.*%-/%7\$ =(\$ 1)'"(\$ '*\$ %* 1 #(")+ '\$/)5#\$(")%S\$

"!\$\$%&!'(%)*+, '*\$(%! - &.\$/*(+!#+\$&%.!(#!(,+)!)/0)!)(- &*1\$%2!/3(%2!*1&)&!\$\$%&)4!

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•! 8 ")/#\$ 1#2)-(*.%\$,.#-: "3\$ LV#?#.\$ 1-5#\$ -\$ (-5#\$)(\$ *.\$ /#-?#\$)(\$ *44#.3M\$ ("#\$ >#2)-(*.B%\$C.*, *%-/\$)%\$-<*&(\$-%\$:/*%#\$(*\$*+#\$-%\$0*&\$6)//\$#?#.\$%##7\$ 8 "#+\$*+#\$,-.(0\$%(.&''/#%\$(*\$ 1 ##(\$("#\$ > #2)-(*.B%\$C.*, *%-/3\$*4(#+\$'*)+'\$4-.\$<#0*+2\$-+0\$:*+:#%%)*+\$ ("#0\$ #?#.\$ ("*&'"(\$, *%%)</#3\$ 0*&\$:-+\$)1-')+#\$ ("#).\$.#-:()*+\$ (*\$ "#-.)+'\$("-(\$("#\$*("#.\$%)2#\$%-)23\$L@#%3\$6#\$6)//\$-::#,(\$("#\$>#2)-(*.B%\$C.*, *%-/3\$ <&(\$*+/0\$)4\$0*&\$)+:.#-%#\$ ("#\$ e_PP3PPP\$+&1<#.\$ "#\$&%#2\$(*\$ enPP3PP7M\$ 8 #B.#\$ (-/5)+'\$.#-:()?#\$2#?-/&-()*+\$*+\$%(#.*)2%\$+*6\$7\$7\$7\$+*(\$,.#((07\$!"#\$,-.()#%\$ 1&%(\$ <#\$:/#-.\$ *+\$ (")%7\$ =4\$ ("#0\$ (")+5\$ ("#0\$ 6-+(\$ (*\$:*+()+&#\$ (*\$ +#'*()-(#3\$ ("#\$ +#'*()-()*+%\$%"*&/2\$:*+()+&#\$6)("*&(\$-\$>#2)-(*.B%\$C.*, *%-/7\$ E+0\$-((#1,(\$(*\$:*&+(#.\$ ("#\$ > #2)-(*.B%\$ C.*, *%-/\$ 1-0\$ 2*\$'.#-(\$"-.1\$ (*\$ ("#\$,.*:#%%\$ -+2\$,*/-.)D#\$("#\$,-.()#%4&.("#.7

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•\$ 8 #B?#\$" - 2\$ ' * 2\$/&:5\$.#:*1 1 #+2)+ ' \$+#&(.-/\$#?-/&-(*.%\$(*\$2#-/\$6)("\$%*1 #\$*.\$ -//\$4-:(&-/\$2)%,&(#%7\$ C#."-,%3\$)(B%\$ -\$(").29,-.(0\$:*+(.-:(*.\$6*.5)+'\$6)("\$("#\$ 1 #2)-(*.\$(*\$:*1 #\$&,\$6)("\$-+\$)+2#,#+2#+(\$#%()1-(#\$*4\$2-1-'#%3*.\$-\$.#().#2\$ A&2'#\$)%%&)+'\$ -\$ <)+2)+'\$ *.\$ +*+9<)+2)+'\$.&/)+'\$ *+\$ %* 1 #\$)%%&#\$ *4\$ /-63\$ -\$ %&1 1 -.0\$A&.0\$(.)-/3\$*.\$%* 1 #(")+'\$%) 1)/-.7\$

- •\$ G*3\$0*&.\$:*+(.-:(&-/\$2)%,&(#\$.#%*/&()*+\$:/-&%#\$)%\$%)/#+(\$*+\$"*6\$("#\$2)%,&(#\$)%\$ (*\$<#\$.#%*/?#2\$7\$7\$7\$6"):"\$/#-?#%\$/)()'-()*+\$-%\$("#\$2#4-&/(7\$C#."-,%3\$("#\$,-.()#%\$:-+\$-'.##\$(*\$-.<)(.-(#\$)+%(#-27\$
- •\$ H.\$0*&.\$-'.##1#+(\$%,#:)4)#%\$-.<)(.-()*+\$<0\$(".##\$-.<)(.-(*.%\$&+2#.\$E1#.):-+\$ E.<)(.-()*+\$E%%*:)-()*+\$Y&/#%