

D ❖ P ❖ R ❖ C ❖ G

Design Professionals Risk Control Group

Third Annual
Loss Prevention Convocation
November 12-14, 1992

Quality Makes The
Difference

**Agenda
DPRCG Loss Prevention Convocation
Friday Morning, November 13, 1992**

TIME	TOPIC	SPEAKER	LOCATION
7:45 am	Continental Breakfast		Grand Canyon
GENERAL SESSION			
8:30 am	Welcoming Remarks	Alan Schwartzman, FAIA Partner - Davis, Brody & Associates President of DPRCG	Mesa
	Convocation Preview and DPRCG Status Report	A. Russell Chaney, Senior Vice President - DPIC Companies, Inc.	
	<u>ADR Update</u>		
	❖ Update	Peter B. Hawes, CPCU President & CEO - DPIC Companies, Inc.	
	❖ Member Case Histories	Joseph Caprile, AIA Principal - Lohan Associates, Inc. Robert W. Davis, AIA Executive Vice President - Davis & Carter, P.C.	
	<u>Partnering-Member Success Stories</u>		
❖ A Case History	Terry J. Rodrigue, P.E. Vice President & Regional Manager - Willdan Associates		
❖ Public Owner's View and Experience	August V. Hardt, P.E. Deputy State Engineer - Arizona Department of Transportation		
❖ Problems, Challenges, How-To's	Ralph J. Stephenson, P.E. Partnering Consultant - Ralph J. Stephenson, P.E., P.C.		
❖ Small Group Discussion	A. Russell Chaney - Moderator		
❖ Panel Discussion	Panel		
12:00 Noon	Luncheon - Breakouts 1 - 3		Grand Canyon Prescott

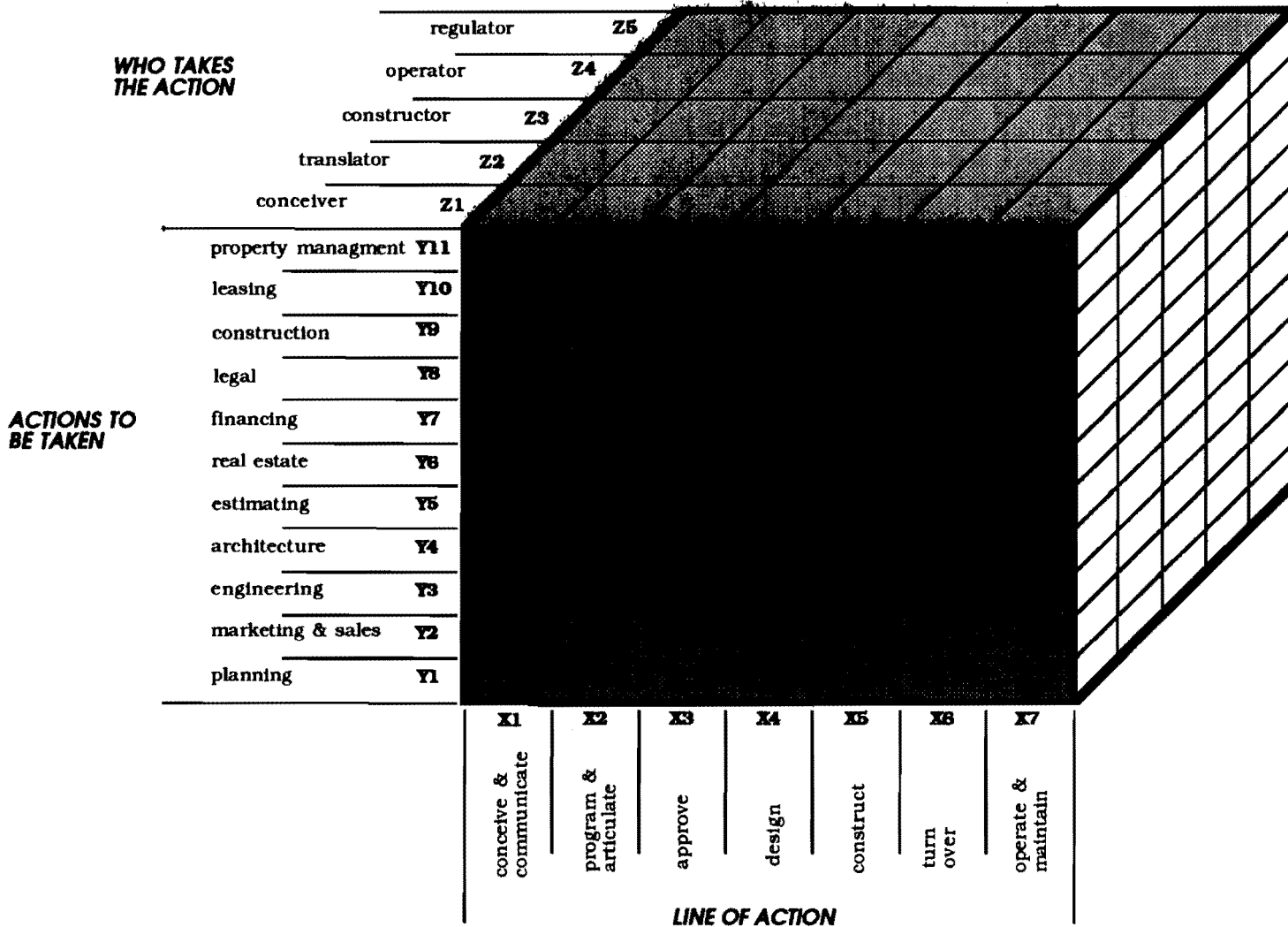
PARTNERING:

Problems, Challenges, How-To's

Ralph J. Stephenson, P.E.

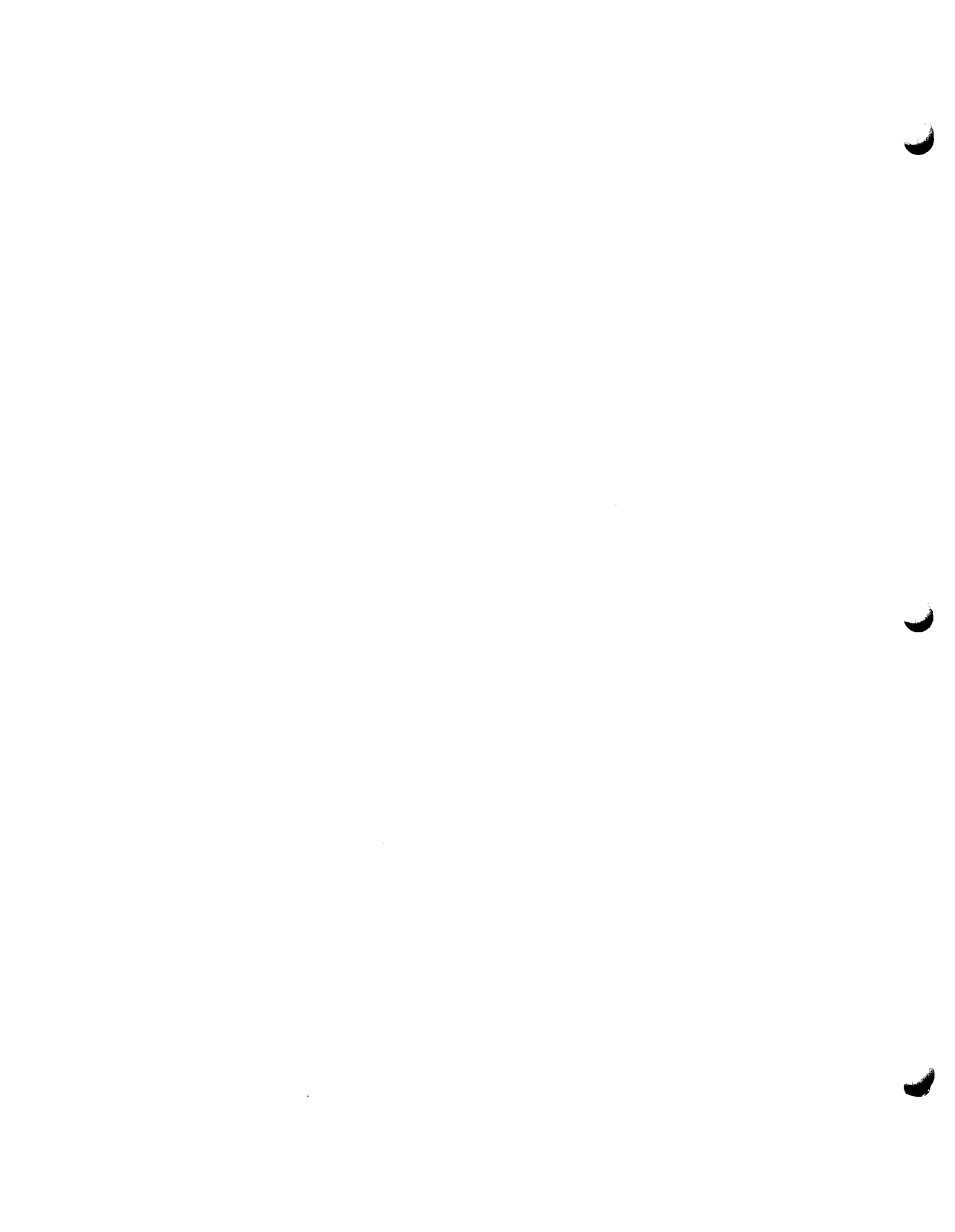


MACRO MATRIX BOUNDARIES OF DESIGN & CONSTRUCTION

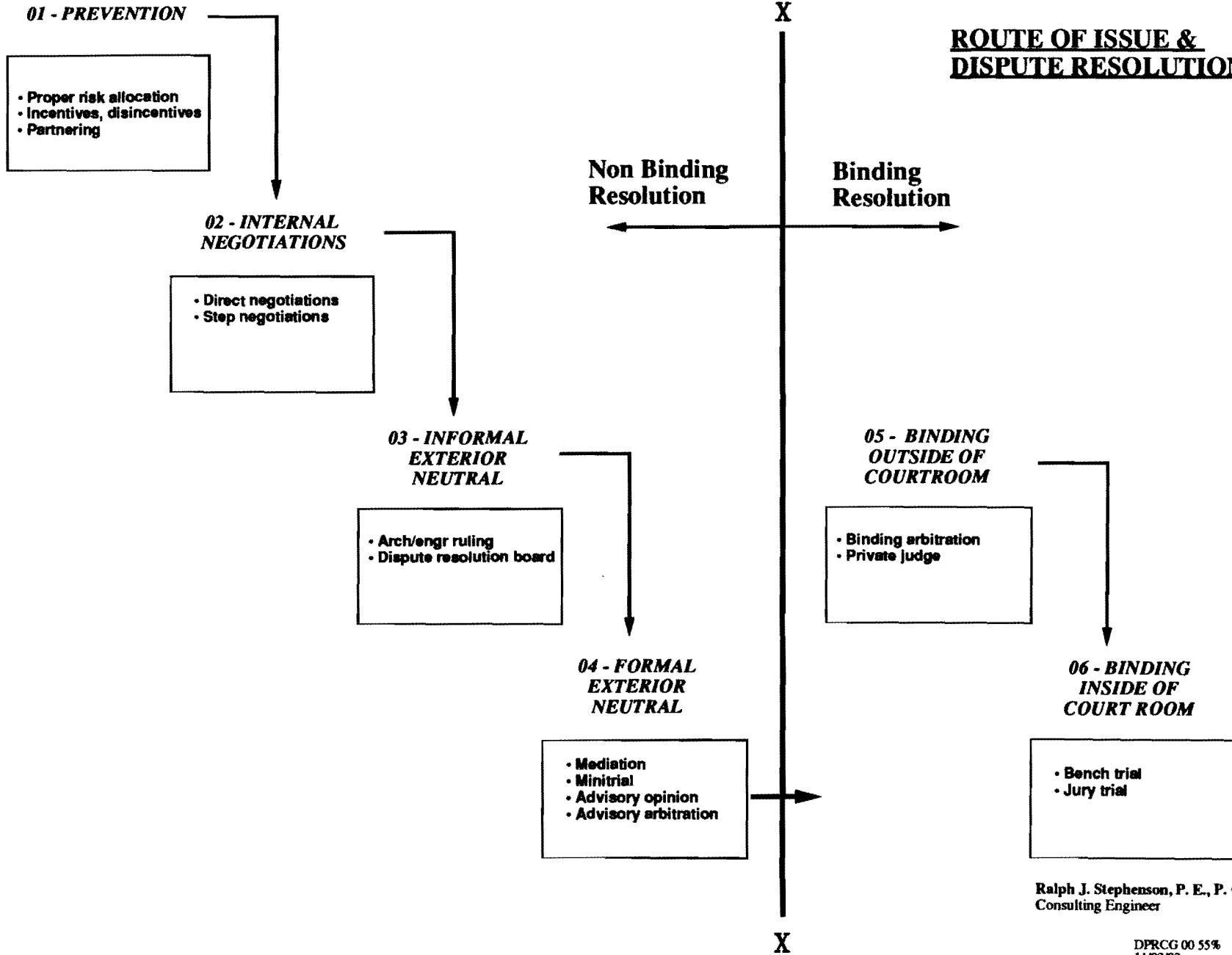


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ROUTE OF ISSUE & DISPUTE RESOLUTION



Ralph J. Stephenson, P. E., P. C.
Consulting Engineer



DPRCG Loss Prevention Convocation

I. How Partnering Agreements Are Put Together

- A. DPRCG Loss Prevention Convocation
- B. November 12 - 14, 1992 - Arizona Biltmore, Phoenix, Arizona
- C. 10:45 am to 12:00 noon - Friday, November 13, 1992
- D. Speaker - Ralph J. Stephenson, P. E. - Consulting Engineer
- E. Problems, Challenges, & How-to's of Partnering - summary outline

1. Route of dispute or issue resolution

a) Non binding

- (1) **Prevention** - produces maximum harmony - usually least cost.

(a) Intelligent and proper risk allocation

- i) Risk should be assigned to the parties that can best manage or control the risk, i.e.

(1) The owner where construction begins before construction documents are complete - the contractor where full, well prepared, checked prebid construction documents are available.

(2) The architect if the owner has prepared a well conceived and clearly stated program - the owner if the a/e is expected to assemble and write the program.

- ii) Attempts to shift onerous risks to architects, engineers or contractors not able to absorb accept these is not cost-effective

(1) Reduces competition

(2) Increases costs due to increased contingency allowances.

(3) Increases costs and reduces effectiveness because of increased project disputes.

(b) Incentives for cooperation

- i) Disincentives or penalty provisions

- ii) Incentives or bonus provisions

(c) Partnering

- i) Stresses good faith agreements

- ii) Emphasizes teamwork

- iii) Encourages good communications

- (2) **Internal negotiation** - parties involved conduct negotiations - requires consensus - relatively cost free.

(a) Direct negotiations

(b) Step negotiations

- (3) **Informal external neutral** - preselected external neutral serves as a informal dispute-resolver - relatively low cost.

(a) Architect/engineer rulings

- i) Must be impartial

- ii) May be respected even though not legally binding.

(b) Dispute resolution board

- i) One member selected by owner and approved by contractor; one by the contractor and approved by the owner; a third by the first two members. Third selection usually acts as chairman.

- ii) Those selected should be from the construction industry.
- iii) Must have no conflict of interest.
- iv) Conduct investigations and hearings on disputes and publish prompt opinions re the dispute.
- (4) **Formal external neutral** - preselected external neutral(s) serves as formal dispute resolver - relatively low cost - usually requires considerable preparation, and may require legal assistance.
 - (a) • **Mediation** - settlement conferences and informal hearings conducted by a neutral third party.
 - (b) • **Minitrial** - private settlement method usually initiated by an agreement between the parties - less formal than mediation.
 - (c) • **Advisory opinion** - neutral expert meets with both parties, obtains information from both, and render prediction as to the ultimate outcome if adjudicated.
 - (d) • **Advisory arbitration** - abbreviated hearing before neutral expert(s). Arbitrator(s) issue advisory award, and render prediction as to ultimate outcome if adjudicated.
- b) **Binding**
 - (1) **Outside of court** - dispute given to knowledgeable third party - moderate cost - may require legal assistance
 - (a) Binding arbitration
 - (b) Private judge
 - (2) **In court - litigation** - court decided lawsuit - most expensive - usually requires legal assistance.
 - (a) Bench trial - before a judge
 - (b) Jury trial - before a jury
- 2. **What is partnering?**
 - a) A method of conducting business in the planning, design, and construction profession without unnecessary, excessive and/or debilitating external party involvement.
- 3. **Why is partnering needed?**
 - a) The professional need
 - (1) The design and construction professional is obliged, above all, to protect the health, welfare and safety of the public.
 - (2) The legal professional is obliged, above all, to protect the interest of his or her client. These interests are supposed to be defined by the body of law. Thus the body of law, not the legal professional, is depended upon to protect the health, welfare & safety of the public.
 - (3) The legal process has moved too far outside the control of those depending on its use to fairly resolve damaging conflict.
 - (4) Therefore, partnering appears to be a sensible alternative route to follow for the planner, the designer, the constructor, the regulator, and above all, the owner and user.
 - b) The business need
 - (1) Focuses on the profitable production of services and facilities.
 - (2) Provides solution methods.

- (3) Measures the quality of the process leading to your end product - a constructed facility.
 - (4) Provides a mechanism by which destructive conflict can be managed by intelligent leaders.
 - (5) Encourages early action on potentially damaging events.
 - (6) May materially reduce professional liability costs.
 - ~~(7) Encourages imposition of third party binding resolution.~~
4. **Partnering - basic guidelines and assumptions of importance**
- a) Partnering is most effective when used early in the project.
 - b) Advance commitment to partnering methods helps solve problems at their source and as they arise.
 - c) Support for partnering should be gained at all project team levels but most particularly at the senior management level in those organizations involved.
 - d) Litigation should not be an initial method used to resolve construction disputes.
 - e) All non-binding dispute resolution methods should be considered before resorting to binding dispute resolution.
 - f) Jobsite dispute resolution helps dispose of problems before they multiply.
 - g) All partnering participants must take responsibility for their thoughts and actions.
 - h) All managers must provide leadership where they can, or where they are expected to lead.
 - i) Don't play sum zero games - Do play win-win games.
 - j) Use understandable ethical principles to gage your behavior
 - k) Most people are honest, concerned, desirous of challenge, need attention, and welcome help in times of turmoil.
5. **Holding the partnering charter meeting**
- a) Tips for planning the partnering process.
 - (1) During the project programming period, encourage the owner, user, and design team to learn about, and consider a partnering effort.
 - (2) During the construction proposal period, encourage prospective prime contractors, vendors and specialty contractors to learn about, and consider a partnering effort.
 - (3) Alert all parties that the project staff may, or will, be expected to be operate within a partnering system by which the facility is built.
 - (4) May be desirable to hold partnering briefing sessions to insure adequate understanding of partnering assumptions and requirements.
 - (5) Award contracts on the basis of well articulated partnering principles and guidelines.
 - (6) Gain and display to all, the owner/user team support for the use of partnering.
 - (7) Adopt and display to all, the design team support for the use of partnering
 - (8) Inform and gain as much support for partnering from associations and other trade organizations as may influence the project implementation
 - (9) Continually review the partnering guidelines and assumptions in planning the project team effort.
 - b) Equipment and staff recommended
 - (1) Equipment recommended

- (a) Lap top or portable word processor & operator
 - i) The meeting chair can often type notes and other material as the meeting proceeds.
 - (b) Copier near at hand capable of quick, high quality duplicating
 - (c) Flip charts - probably as many as 5 to 7
 - (d) Chalk boards
 - (e) Wall space for display of charts
 - (f) Drafting tape - non paint destructive
 - (g) Push pins
 - (h) Overhead projector
 - (i) Large screen - 6' x 6' at least
- (2) Staff assistance recommended - you may not have much but these are of great help
- (a) Someone to run for copies
 - (b) Someone to help break out and reassemble groups
 - (c) Someone to display flip charts and other material as needed
 - (d) Someone to help take notes during group discussions
 - (e) Someone to tend as needed to the break out groups
- c) Writing the basic partnering document - the charter.
- (1) Select who is to be in charge of the initial partnering effort?
 - (a) Owners
 - (b) Users
 - (c) Designers
 - (d) Contractors
 - (2) Set the date, time and place of the charter meeting.
 - (3) Invite all involved in responsible project decision making and operations actions to the charter meeting.
 - (a) Owner
 - (b) User
 - (c) Planners
 - (d) Architects
 - (e) Engineers
 - (f) Specialty designers
 - (g) Prime contractors
 - (h) Sub contractors
 - (i) Key vendors
 - (j) Key suppliers
 - (k) Operators of the facility
 - (l) Regulatory representatives - who benefits from a good project?
 - (m) Guests - who do you want to see you in action?
 - (4) Provide a briefing document to all expected to attend - to be sent by senior management (of the owner, designer, or principal contractor).
 - (a) State objectives of the meeting
 - (b) Explain who is expected to attend
 - (c) Present an agenda - well thought out & well written

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- (5) Conduct the partnering meeting & write the charter
- d) Sample agenda

November 13, 1992

Dear _____:

The Network Insurance Mutual Company requests your presence on Friday, November 30, 19__ , at a meeting to prepare a partnering charter to guide construction of their new downtown headquarters building.

Enclosed with this letter is a packet of partnering explanatory materials. I would appreciate it if you would read this material prior to the meeting. I understand from Mr. Prince of Prince Construction that you have already attended a briefing session on partnering conducted by their project management staff. This introduction was designed to help you understand what Network Mutual wishes to achieve through the use of partnering.

Partnering is fully supported by me, by Network Mutual's senior executive staff, by Mr. Thomas Bonwitt president of Bonwitt & Providence, the architects/engineers of record, and by Mr. Roy Prince, president of Prince Construction, general contractors for the project.

Below are outlined the meeting objectives and agenda for the day. The neutral chairman of the meeting will be Marion Day, a well known, and highly respected design and construction consultant in our area.

We appreciate your interest, participation and efforts to help improve the probability of success for you, and for us on this significant project.

Purpose of meeting: To develop and adopt a partnering charter for the guidance of the project team.

Location of meeting: Topaz Hotel - 444 Lincoln Street

Those attending: See attached list.

Meeting chairman: Marion Day

Timetable

07:00 to 08:00 am - Continental breakfast - Steamship Room - 1st floor level

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08:00 to 10:00 am - Session #1

- Introduction - by Cirro Street, Thomas Bonwitt and Roy Prince.
- Exercise #1 - What actions do others take that create problems for us? - break out for discussion, reassemble, & present findings.

10:00 to 10:15 am - Coffee break.

10:15 to 12:00 noon - Session #2

- Exercise #2 - What actions do we take that cause problems for others? - break out for discussion, reassemble, and present findings.
- Exercise #3 - What recommendations can we make that could improve relations and performance on the Network Mutual project?
- Exercise #4 - In light of exercises #1, 2 & 3 what do I think my organization's mission is on the Network Mutual project.

12:00 to 01:00 pm - Lunch - United States Room - 2nd floor level

- During lunch a small volunteer task force will meet in a separate room, and prepare a 25 word or less 1st draft mission statement for the project.

01:00 to 03:00 pm - Session #3

- Exercise #5 - Full partnering membership discuss, revise and accept the 1st draft mission statement as revised.
- Exercise #6 - What specific project objectives can we now set within the results of exercises #1, 2, 3, 4, and 5 that will help insure excellent relations and performance on the Network Mutual project?

03:00 to 03:15 pm - Break.

03:15 to 05:00 pm - Session #4

- Review principles of alternative dispute resolution.
- Review principles of partnering performance monitoring and evaluation.
- Exercise #7 - Combine all previous discussion into a charter ready for signatures.
- Print final draft of charter.

05:00 pm - Session #5 - sign charter & receive award memento.

05:15 pm - Adjourn.

Sincerely yours,

Cirro T. Street

Cirro T. Street,
President & Chief Operating Officer

6. *Follow up*

a) Issue resolution

- (1) Task force appointed & sets issue resolution policy
- (2) General procedures
 - (a) Task force establish log system to record filing of issues and disputes
 - (b) Task force sets method of alternative dispute resolution to be used
- (3) Sample issue resolution policy - from Detroit VAMC partnering agreement
 - (a) Policy

"It is the goal of the participants of this project to first and foremost avoid unnecessary conflict. To achieve this, we will maintain open lines of communications as stated in the Partnering Charter. Further, it is our goal to resolve an issue at the level at which it arose. If this is not possible the issue will be referred promptly to the next highest level for resolution.

In all cases, individuals who are involved in a difference should be businesslike and not resort to personal attack. The principles outlined in the Partnering Charter objectives should be followed at all times in resolving differences.

Upon request, site meetings will be used to discuss any unresolved issue in an attempt to reach resolution. Any issue presented should be clearly defined and alternative solutions considered. The resolution process is to work through open communication and looking at the other side's point of view. In addition, issues are to be kept in the forefront to ensure resolution in a timely manner. A log of unresolved issues will be maintained from meeting to meeting.

If resolution cannot be reached at the job site, the principals of the involved firms or agencies should attempt to reach resolution through informal discussion before the formal process outlined in the contract documents is used.

In seeking resolution to an issue, involved parties will attempt to:

- Thoroughly understand the issue.
- Maintain empathy for the other point of view.
- Communicated thoughts openly and clearly.
- Clearly document resolution."

(b) Methodology - restatement of policy provisions

- i) Goal - to encourage and provide a forum for resolution of issues at the lowest possible level, but to provide a mechanism to elevate the issue if needed
- ii) If resolution is not achieved at the lowest level forum, the principals in the firm in conflict will attempt to reach resolution through informal

discussion.

b) Partnering evaluation

(1) Task force appointed & sets evaluation processes

(a) Should include representatives from all signatories to partnering charter

(2) General procedures

(a) Task force sets and maintains a schedule of regular evaluation meetings - each three to six weeks.

(b) Task force uses charter objectives to measure project partnering effectiveness

i) Assigns weights initially & judges implementation effectiveness each period by a value.

ii) Each member of task force makes and submits individual evaluation.

iii) Evaluations combined and averaged for discussion.

(c) Where dysfunctions are identified, the task force recommends and acts quickly to resolve the cause of the dysfunction.

7. *Charters - provided by courtesy of project management and staff as noted*

a) Charter final draft - Veteran's Administration Medical Center Replacement Hospital - Detroit, Michigan

(1) Mission statement

• We the undersigned recognize that we all have common objectives. We therefore agree to strive together to construct the Detroit VAMC safely, on time and within budget to the highest quality standards commensurate with its mission of serving veterans and the community.

• To achieve our mission we believe in the following principles

- Commitment
- Mutual trust
- Integrity
- Personal pride

(2) Charter objectives

(a) 01. Maintain open lines of communications

i) a. Recognize the need for quality information

ii) b. Minimize submittal and response times in all matters

(b) 02. Keep paper and administrative work to a minimum

(c) 03. Develop and implement an alternative conflict resolution system

i) a. Prompt resolution of conflicts at lowest possible level

ii) b. Eliminate need for Contracting Officer decisions

iii) c. Fair interpretation of ambiguities

iv) d. Be proactive (not reactive) in problem solving

- v) e. Maintain objective attitude toward constructability and practicality
- vi) f. Accept responsibility for your actions or inactions
- vii) g. Have empathy in all matters
- viii) h. Clearly describe changes to contract work
- (d) 04. Limit cost growth
 - i) a. Develop cost effective measures
- (e) 05. Maintain clean, efficient, secure work site
 - i) a. No lost time due to accidents
 - ii) b. Properly staff project
 - iii) c. Be a good neighbor
- (f) 06. Seek to maintain good job morale and attitudes
 - i) a. Promotion of partnering attitudes at all levels of contract administration
 - ii) b. Have fun
 - iii) c. Have pride in your product
- (g) 07. Commit to quality control in all project related matters
 - i) a. Do it right the first time
 - ii) b. Maintain proper work sequence
 - iii) c. Meet design intent
 - iv) d. Recognize owner's needs in occupation and operation of the facility
- (h) 08. Close out job in proper and timely manner
- (i) 09. Maintain and implement a partnering evaluation system
- b) Charter final draft - Michigan Millers Mutual Insurance Addition & Renovation - Lansing, Michigan
 - (1) Mission
 - (a) We the Project Team commit to construct a quality facility, on time and within budget, maximizing safety, communication, & cooperation so that all participants can be proud and profitable in their accomplishments.
 - (2) Objectives - to accomplish our mission we recognize a need to work to the following goals and objectives.
 - (a) Submittals
 - i) Clarify objectives and expectations of the submittal process
 - ii) Minimize submittal and approval times
 - iii) Provide accurate, prompt, clear, concise approvals
 - (b) Payments
 - i) Make payments in accordance with the published flow chart process
 - (c) Information processing & paperwork
 - i) Expedite all information and indicate desired response times
 - ii) Maintain open lines of communication among Project Team members
 - iii) Be available
 - iv) Attempt to offer possible solutions to questions within a proper scope
 - v) Provide clear responses to requests for information
 - (d) Legal matters
 - i) No litigation
 - ii) Settle disputes at originating level

- (e) Abatement
 - i) Establish, approve and publish a plan of abatement
 - ii) Abate promptly
- (f) Planning and scheduling
 - i) Provide, obtain, and use accurate activity information
 - ii) Clearly monitor the project against the plan and schedule
 - iii) Commit to, and fulfill man hour projections
- (g) Decision making
 - i) A/E team to regularly inspect work and advise compliance
 - ii) Define and clearly communicate quality expectations
 - iii) Properly empower those at all decision making levels
- (h) Policies and procedures
 - i) Prepare, review, approve and publish policies and procedures that will serve as guidelines to manage the project
- (i) Site layout and management
 - i) Formulate and publish a trash removal & parking plan
 - ii) Properly establish and maintain bench marks and control lines
- (j) Processing revisions
 - i) Provide written authorization prior to work proceeding
 - ii) Respond to requests for information, bulletins and change orders promptly
 - iii) Prepare, approve & publish a flow chart for processing revisions
- (k) Be a good partnering neighbor
 - i) Commit to protecting your work and the work of others
 - ii) Show all participants due respect and acknowledgement
 - iii) Maintain proper work sequences
- (l) Total quality management
 - i) Prepare, approve, publish, and commit to a TQM program

8. Definitions

a) Alternative dispute resolution

In its generic form, a method of resolving disputed construction claims outside the courtroom.

Methods of resolving disputes in planning, design and construction by cooperative, internal, or third party assistance methods that are alternatives to conventional dispute resolution methods currently in common use. Conventional methods are usually considered to be litigation and binding arbitration.

Alternative dispute resolution may incidentally make use of non traditional combinations of conventional dispute methods.

b) Claim

A demand for something as due; an assertion of a right or an alleged right. In construction generally a demand for something as due, or in which the demand is disputed.

- c) **Destructive conflict**
Animosity or disagreement which results in lowering the potential for an individual or organization to succeed.
- d) **Dysfunction - Organizational**
An organizational problem that hinders or prevents achieving objectives. May be temporary or permanent.
- e) **Issue resolution**
A method of reaching agreement and closing out disputes and problems at the lowest possible management level, in the shortest possible time, and with the lowest potential for residual hard feelings.
- f) **Manage**
To define, assemble and direct the application of resources.
- g) **Partnering - Associated General Contractors**
A way of achieving an optimum relationship between a customer and a supplier. A method of doing business in which a person's word is their bond, and where people accept responsibility for their actions.

Partnering is not a business contract, but a recognition that every business contract includes an implied covenant of good faith.

- h) **Partnering - Construction Industry Institute**
A long term commitment between two or more organizations for the purpose of achieving specific business objectives by maximizing the effectiveness of each participant's resources.

This requires changing traditional relationships to a shared culture without regard to organizational boundaries. The relationship is based upon trust, dedication to common goals, and an understanding of each other's individual expectations and values. Expected benefits include improved efficiency and cost effectiveness, increased opportunity for innovation, and the continuous improvement of quality products and services.

- i) **Partnering - suggested base statement**
A method of conducting business in the planning, design, and construction profession without unnecessary, excessive and/or debilitating external party involvement.
- j) **Partnering charter**
The basic manual for operating a partnering system. Contains at a minimum, the mission of the project team, and their objectives for the project. Usually is signed by those writing the document.

The charter is an agreement in principle and must not supersede or supplant the design and construction contracts in place or to be written.

- k) **Positive conflict**
Hostility that is managed so that its resolution raises the potential for individuals or organizations to succeed at being excellent.
- l) **Problem**
A deviation from an accepted and/or approved standard of performance.

- m) **Project Delivery System**
A method of assembling, grouping, organizing & managing project resources so as to best achieve project goals & objectives.
 - n) **Resolve***
To find a solution to
 - o) **Standard of Performance**
A well defined, explicitly stated, approved and accepted statement of the measurements to be used as a gage of performance, and goal and objective achievement.
 - p) **Sum zero game**
A situation in which there is a winner and a loser. The loser often will lose what the winner wins.
 - q) **Ultimate Decision Maker (UDM)**
The individual or group at the lowest management level that has the authority to make a final binding decision in any job related matter.
 - r) **Value added**
The improvement in the worth of anything that results from the efforts, contribution and involvement of specific people, processes, materials and ideas.
 - s) **Win - win game**
A situation in which there are no losers. Usually some parties win more than other parties win.
9. **Source credits for materials used in talk**
- a) Don Smith - Project Director VA Hospital, Detroit, Michigan - Bateson/Daily - joint venture
 - b) The Christman Company - Michigan Millers Mutual Insurance project - Lansing, Michigan
 - c) Partnering - A Concept for Success - The Associated General Contractors
 - d) In Search of Partnering Excellence - Construction Industry Institute
 - e) CPR legal program to develop alternatives to litigation - DART book "Preventing and Resolving Construction Disputes"
 - f) Mark D. Cipollini, P. E. - Vice President MDC of Day and Zimmerman
 - g) E. M. Shanley - Construction Consultant