

**To:**

**From:** Mike McCormick

**Date:**

**Re:** Philosophies and process

I very much enjoyed our meeting the other day and look forward to working together. As a next step, I thought it would be helpful to discuss the strategies and protocols that I plan to implement, get your comments or suggestions, and tweak as appropriate. The basic framework is set out in the Project Neutral Agreement, and I've reproduced the relevant portions below. However, I believe filling in some detail and outlining the practicalities will help to keep us all on the same page.

To begin with, and as you probably know, a project neutral is essentially a referee who is (1) unbiased by definition, (2) thoroughly familiar with the project and its personnel, and (3) able to act quickly and fairly in resolving issues and claims. A neutral's opinion can be advisory or binding. In our case, except to the extent that advice is given in trying to reach an agreed solution, "Initial Decisions" are binding until substantial completion. Issues and claims cannot be submitted to outside mediation, arbitration or litigation during the course of construction.

First and foremost, my prime objectives are to assist in *avoiding problems*, but if they arise, quickly get to *agreed solutions*. I intend to support a "team" approach to the project and promote an underlying culture of problem-solving.

Basically there are 3 main areas of my involvement:

1. **Identification of potential issues.** On an ongoing basis I will be reviewing project documents, communications, schedules, meeting notes, RFI's and Change Requests, as well as attending a number of project meetings and making site visits. My intent is to be a "fly on the wall" of the project and lend an independent eye to spotting any potential source of conflict. If I notice something, I will advise the two of you and/or others as appropriate, and hopefully we can flush it out or dismiss it as soon as possible.
2. **Informal, early problem-solving.** As we all know, the further a problem gets from the field the more difficult, aggravated, and expensive it becomes. Therefore, it's important that the neutral be involved in any controversy as soon as possible to assist in working out the issue before it mushrooms. Having said that, it is also important that the neutral not micro-manage everyday speedbumps, and that the business processes of all parties be respected. Therefore, we need to achieve a good balance between being proactive in managing issues while not over-intruding on the project.

At this early stage of an issue, my approach is to work quickly and personally with the people who are closest to the problem, facilitate negotiations, engage in very informal mediation processes, and/or utilize whatever other low-impact conciliation techniques may be appropriate. Primary



objectives are fairness, speed, and consensus. Any party can request my involvement by phone or email, and the process itself may be conducted by conference calls, face-to-face meetings, or simply a review of documents, as appropriate. Of course, a record of the matter will be maintained, including a summary of the problem, the efforts to resolve it, the result of those efforts, and any findings, recommendations or “Initial Decisions” on my part. Written, executed agreements may be called for as well.

3. **Structured Resolution.** Some disputes are simply more complicated or have a larger impact on the project. Therefore, if in my opinion informal processes have not or will not be successful, a more structured format will be initiated. In addition, any party at any time may invoke the structured approach by transmitting, on a form to be provided, a “Request For Project Neutral” in which the nature of the dispute and the requested action is summarized. Copies of the Request must be delivered, at the same time, to any party that might be affected by the desired action. A “Resolution Meeting” is then organized and conducted as follows:
  - a. Unless agreed otherwise by the parties, or prohibited by circumstances, I will schedule a Resolution Meeting as soon as possible but no later than 5 business days following the initiation of the structured process.
  - b. At least 2 business days prior to the Meeting each party shall deliver a concise written summary of its position together with any appropriate documents, witnesses and proposed solutions to the matters in controversy to myself and the other parties.
  - c. All parties must have a representative with full settlement authority in attendance at all meetings.
  - d. In general, the meeting will commence with opening statements by the parties, followed by the testimony of witnesses and introduction of exhibits, all in a manner designed to best facilitate an agreed resolution of the matters. To that end, I may meet separately and/or jointly with the parties, determine the admissibility, relevance or weight of the evidence, and require further investigations, inspections or testing and set schedules for reconvening the Meeting.
  - e. If an agreement is reached, it shall be reduced to writing and executed by the parties within 3 days following the Meeting, or as otherwise agreed.
  - f. To the extent that the parties have not reached an agreed solution, in whole or part, I will render an Initial Decision concerning the unresolved issues, claims, or disputes within 3 days of the Meeting, unless circumstances or complexities require additional time. The decision will be in writing and include the basis therefor and any specific actions required.
  - g. These resolution proceedings shall be regarded as settlement negotiations. Any communication relating to the subject matter of the disputes made during the resolution process by myself, any participant, or any other person present at the Resolution Meeting shall be a confidential communication. No admission, representation, statement or other confidential communication made in setting up or conducting the proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.



I cannot overemphasize the importance of, and my dedication to, avoiding problems and fixing them fairly, quickly and amicably. My client is the project, and helping to make it more successful in terms of time, money and aggravation is my goal.

Once again, I look forward to working together, and to any comments or suggestions you might have.

*MJL*