

**Construction Contract: Predispute Arbitration Clause**  
Designating Arbitration Service of Portland, Inc.  
and American Arbitration Association

(To eliminate the option of choosing AAA, delete the *language* in brackets[ ].)

**Arbitration Required/Mediation First Option.** Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, or that arises out of or relates to any subcontract or sub-subcontract, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc. [*or the then effective construction industry arbitration rules of the American Arbitration Association, whichever organization is selected by the party which first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected*], and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The owner, the contractor, and all subcontractors, sub-subcontractors, material suppliers, engineers, architects, designers, construction lenders, bonding companies, and all other parties concerned with and involved in the performance of the contract are bound, each to the other, by this arbitration clause, provided such party has signed this contract, or has signed a contract that incorporates this contract by reference, or signs any other agreement to be bound by this arbitration clause. This arbitration clause shall not preclude any party from filing a statutory construction lien or from commencing suit to foreclose such lien, but the foreclosure suit shall be stayed until the rendering of the arbitration award, which award shall be binding in such foreclosure suit as to all matters determined in arbitration, and the lien may then be foreclosed to the extent permitted by law. The parties acknowledge that mediation usually helps parties to settle their dispute. Therefore, any party may propose mediation whenever appropriate by any mediation process or mediator as the parties may agree upon.

(Note: The right to arbitrate is not waived by the filing of a lien and bringing suit to foreclose the lien: Harris v. Dyer, 50 Or App 223 (1981).)

(Note on arbitration's interface with mediation. When customary settlement discussions falter, mediation is always the first alternative to consider. But, mediation is a voluntary and cooperative process and, unlike arbitration, it cannot be forced upon the other party. A dispute resolution clause should not require mediation as a legal condition precedent to arbitration or litigation, because it allows a defendant in bad faith to use the mediation process as a delay tactic.)

(Note: Any existing attorney's fees clause should be modified to include an arbitration proceeding.)