

COOPER, TANIS & COHEN, P.C.

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AGREEMENT TO MEDIATE

This is an agreement between _____ and _____ (hereafter referred to as the parties) and Leonard D. Tanis, Mediator. The parties have entered into mediation with the intention of reaching a consensual settlement of their dispute. The provisions of this agreement are as follows:

1. The mediator is neutral facilitator who will assist the parties to reach their own settlement. He will not make decisions about "right" or "wrong" or tell the parties what to do.
2. Although he is a licensed attorney, the mediator is acting only as a neutral alternative dispute professional. The mediator does not offer or provide legal advice nor does he provide legal counsel. He may, however, provide legal information. Each party is advised to retain his or her own attorney in order to be properly counseled about his or her legal interests, rights and obligations. The parties understand and affirm by signing this Agreement that they are not engaging the mediator as their attorney, are not relying on the mediator for legal advice or opinion, and understand that the mediator is not obligated to identify or resolve legal issues, whether or not such issues are addressed in the course of mediation.
3. It is understood that in order for mediation to work, open and honest communications are essential. Accordingly, all written and oral communications, negotiations, and statements made in the course of mediation will be treated as privileged settlement discussions and are absolutely confidential.
 - a. The mediator will not reveal anything discussed in mediation without the permission of both parties. It is understood that the mediator is not required to maintain confidentiality if he has reason to believe that a child is in need of protection or if either party is in danger of bodily harm.
 - b. The parties agree that they will not at any time, before, during, or after mediation, call the mediator or his consultant or anyone else associated with him as a witness in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to call the mediator or his consultant or anyone associated with him as witnesses, that right is hereby waived.

c. The parties agree not to subpoena or demand the production of any record, notes, work product or the like of the mediator in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to demand these documents that right is hereby waived.

d. If, at a later time, either party decides to subpoena the mediator, the mediator will move to quash the subpoena. That party agrees to reimburse the mediator for whatever expenses he or she incurs in such an action (including attorney's fees) plus \$250.00 per hour for all the time that is taken by this matter.

e. The exception to the above is that this Agreement to Mediate and any written agreement made and signed by the parties as a result of mediation may be used in any relevant proceeding, unless the parties make a written agreement not to do so.

4. It is understood that full disclosure of all relevant and pertinent information is essential to the mediation process. Accordingly, there will be a complete and honest disclosure by each of the parties to the other and to the mediator all relevant information and documents. This includes providing each other and the mediator with all information and documentation that would usually be available through the discovery process in a legal proceeding. If either party fails to make such full disclosure, then the agreement reached in mediation may be set aside.

5. While both parties intend to continue with mediation until a settlement is reached, it is understood that either or both parties may withdraw from mediation at any time. If the mediator determines that it is not possible to resolve the issues through mediation, he can terminate the process.

6. Both parties understand that through the mediation process they may be waiving or compromising legal rights by settlement of the dispute and any claims.

7. When an agreement is reached, upon the request of the parties, the mediator will draft a Memorandum of Understanding or other written settlement agreements. Each party is advised to review this with his or her attorney before the agreement is placed in final form and signed. Documents prepared in the course of mediation will only be ancillary to mediation and the memorializing of any agreement and not for the purpose of providing legal advice by the mediator.

8. The parties agree to pay the mediator \$200.00 per hour for all time spent by the mediator. This includes, but is not limited to, drafting agreements, meetings with the parties, phone calls, and review of documents prior to mediation. Payment for two hours will be made in advance of the mediation and full payment, by cash, check or credit card of any amount due will be made at the end of any mediation session; fees for other work will be due upon receipt of the mediator's invoice. The parties will share the cost of the mediator equally unless a different arrangement is agreed to by the mediator and the parties. Any invoice unpaid after thirty days will accrue interest at the rate of 1.5% per month.

9. For efficiency reasons it is easier to communicate by electronic means such as email, web based software, cellular phones, etc. However, due to the nature of such communications, they can be intercepted or read by others. By signing below, the parties specifically authorize the mediator to communicate with them or their attorneys regarding confidential mediation matters by electronic means. The parties understand that electronic communication sent by or received by the mediator are not encrypted and may not be sent through a secure server. The parties agree to accept such risk and agree to hold the mediator harmless for any damages that may result from such

electronic communications that are intercepted or read by others.

10. The mediator is authorized to destroy all files related to the mediation and their matter six (6) months after the mediation is concluded.

11. Each party shall advise the mediator of any existing court orders or conditions that would impact the mediation process, including protective orders, bond conditions, pending motions, etc.

I have read, understand and agree to each of the provisions of this agreement.

Party

Party

Attorney

Attorney

Date

Mediator