

# FORREST COLLINS, P.C.

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## AGREEMENT TO MEDIATE

This is an Agreement between \_\_\_\_\_ and \_\_\_\_\_, hereinafter “the clients”, and Forrest Collins, P.C., hereinafter “the mediator,” to enter into mediation with the intent of resolving the following issues: \_\_\_\_\_.

The clients and the mediator and agree as follows:

1. **NATURE OF MEDIATION.** The clients hereby retain Forrest Collins, P.C. as mediator to facilitate their negotiations. The clients understand that mediation is a process in which the mediator assists clients in reaching agreements in a collaborative, consensual, and informed manner. It is understood that the mediator has no power to decide disputed issues for the clients and cannot make decisions for them. **It is further understood that Forrest Collins, although he is an attorney, will not represent either client or provide legal advice to either client.**

The clients understand that mediation is not a substitute for independent legal advice. The clients are encouraged to secure such advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated agreement before signing that agreement. The clients understand that the mediator’s objective is to facilitate the clients in reaching an agreement that, in their opinions, works well for both of them. The clients also understand that the mediator has an obligation to work on behalf of each client equally.

The clients understand that if they proceeded to trial a judge could potentially make a different decision than the outcome reached in mediation.

2. **MEDIATION IS VOLUNTARY.** Mediation is a voluntary process. Either client may withdraw from or suspend the mediation process at any time and for any reason. The clients also understand that the mediator may suspend or terminate the mediation if the mediator feels that the mediation will lead to an unjust or unreasonable result; if the mediator feels that an impasse has been reached; if the mediator feels material information has been concealed; if the mediator’s fees are not paid; or if the mediator determines that he can no longer effectively perform a facilitative role.

3. **MEDIATION IS CONFIDENTIAL.** It is understood between the clients and the mediator that the mediation is strictly confidential. **Mediation confidentiality, including exceptions to mediation confidentiality, are governed by [ORS 36.220](#) and [ORS 36.222](#).**

Mediation confidentiality has several aspects. First, mediation discussions are private and may not be discussed with anyone outside the mediation except your attorney (or person with

whom you have privileged relationship as defined by statute). Second, any draft resolutions, any meeting minutes, any correspondence and any unsigned mediated agreements are strictly confidential and shall not be admissible in any court proceeding except as provided by statute. An exception to this rule is that this Agreement to Mediate is not confidential.

The clients agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the clients. All aspects of the mediation are considered by the clients and the mediator to be inadmissible settlement negotiations. The clients understand and agree that the mediator may have private caucus meetings and discussions with any individual client. These meetings and discussions shall be confidential between the mediator and the caucusing client unless the mediator obtains permission to share some aspect of the discussion.

The mediator has certain statutorily or judicially required reporting obligations, including reporting a reasonable belief that child abuse or elder abuse has taken place or to speak up to protect one client from another if substantial physical harm is a concern.

4. **MEDIATION REQUIRES GOOD FAITH AND FULL DISCLOSURE**. Each client agrees to fully and honestly disclose all relevant information and writings as requested by the mediator and all information requested by the other client. **The clients acknowledge and agree to abide by the terms of [ORS 107.089](#) relating to the mandatory disclosure of documents.** The clients may mutually agree to waive the requirements of ORS 107.089 if both of them choose to do so.

5. **THE MEDIATOR IS NEUTRAL AND IMPARTIAL**. The clients understand that the mediator will remain impartial throughout and after the mediation process. The mediator shall not champion the interests of any client over another in the mediation or in any court or other proceeding. The clients agree that the mediator may discuss the clients' mediation process with any attorney that either client may retain as individual counsel. Such discussions will not include any negotiations, as all mediation negotiations must involve all clients directly. The mediator will provide copies of correspondence, draft agreements, and written documentation to independent legal counsel at a client's request.

6. **MEDIATION FEES**. You agree to pay the mediator at a rate of \$295 per hour. Work performed by legal assistants or paralegals will be billed at the rate of \$185 per hour. **There is a minimum charge of .1 (one-tenth of an hour) for all services provided and all actions taken on your case.**

The mediator has taken time creating agreements, pleadings, and other documents. The value of these cannot be measured merely by the time it may take to adapt them to your case. For this reason and others, you agree to pay for services at not less than certain minimum rates. The mediator charges a minimum judgment drafting fee of 2 hours plus the actual time spent customizing it for your case (the typical judgment takes between 2.5 and 4.5 hours total). The documents that accompany the judgment are billed at a flat rate of 2 hours' time at the above-stated rate. Any additional motion that may be necessary in your particular case is billed at .5 hours. Travel time will be billed at the above-stated rate should travel be required.

You agree to place a credit card on file with the mediator. **You understand the mediator has not accepted your case and will not act as your mediator until you have signed this Agreement and placed a credit card on file.**

The mediator will send out bills on a monthly basis. Bills are sent via Clio, an online case-management program. You authorize the mediator to process payment by charging your credit card on the third business day after the bill is sent to you. A bill is considered received on the same day it is sent. For example, if a bill is sent on Monday, the card will be charged on Thursday. You have the right to question or contest any item of the bill. Any adjustment to the bill will be made on the same statement as long as the question or contest is brought to the mediator's attention before payment is processed. If an adjustment needs to be made to the bill after payment is processed, you agree that the adjustment will be made during the next billing cycle.

Any statement of predicted fees is an estimate only and should not be relied on by the clients. The clients shall be jointly and severally liable for the mediator's fees and expenses. Both clients agree that mediation fees and expenses shall be paid by: \_\_\_\_\_.  
**If one client fails to make their share of the payment, the mediator may seek payment from the other client.**

Should payment not be timely made, the mediator may, in his sole discretion, stop all work on behalf of the clients, including the drafting and/or distribution of the clients' agreement, and withdraw from the mediation. If collection or court action is taken by the mediator to collect fees and/or expenses under this agreement, the prevailing party in any such action and upon any appeal therefrom shall be entitled to attorney fees and costs therein incurred.

7. **DIVISION OF RETIREMENT ACCOUNTS.** Certain types of retirement accounts require something called a "Qualified Domestic Relations Order" (QDRO) to divide them. The mediator does not prepare QDRO's but can facilitate hiring a QDRO attorney who can prepare the necessary documentation. The clients may also hire their own QDRO attorney. The QDRO attorney is typically hired jointly by both parties during the mediation process. The QDRO attorney 1) acts as a mediator for the parties on the limited issue of the preparation of the QDRO and related documentation, or 2) represents the mediator in the preparation of the QDRO and related documentation. **Although the QDRO attorney is typically hired jointly by the parties in the mediation process, each client retains the right to have the QDRO reviewed by their own independent QDRO attorney.** A QDRO can significantly impact the legal rights of both parties, and each party is advised to have the QDRO reviewed by their own separate counsel.

8. **TAX INFORMATION.** The mediator is not an accountant or tax expert and cannot offer tax advice. Any discussion of taxes in mediation is only to help clients generally assess their situation and should not be relied on as tax advice. The clients acknowledge there is often significant tax consequences associated with domestic relations cases. The clients will obtain such accounting or other tax advice as they deem necessary. This applies to all discussions had as well as projections made or reporting done using Family Law Software.

9. **PRESERVATION OF STATUS QUO.** By signing this agreement, the clients are agreeing to be bound by the terms of [ORS 107.093](#) during the pendency of the mediation. This means, amongst other things, that neither client will make any changes to any beneficiary designations or allow any policy of insurance to be changed or lapse **without the written consent of the other client.** Violation of this paragraph shall be grounds for terminating the mediation.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Client

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### **Payment Information**

#### **Primary Card (Credit or Debit)**

Name on card: \_\_\_\_\_

Billing address: \_\_\_\_\_

City, state, zip: \_\_\_\_\_

Card number: \_\_\_\_\_

Expiration: \_\_\_\_\_ CVV: \_\_\_\_\_

#### **Secondary Card (Credit or Debit)**

Name on card: \_\_\_\_\_

Billing address: \_\_\_\_\_

City, state, zip: \_\_\_\_\_

Card number: \_\_\_\_\_

Expiration: \_\_\_\_\_ CVV: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_