

# FORREST COLLINS, P.C.

DIVORCE MEDIATOR AND COLLABORATIVE ATTORNEY

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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.

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 although Forrest Collins is an attorney, he is not acting as an attorney and 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 obtain legal 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 would 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.

All aspects of the mediation are considered by the clients and the mediator to be inadmissible settlement negotiations. To the extent permitted by law, the clients waive their right to call the mediator to testify concerning any aspect of the mediation or to provide any materials from the mediation in any court proceeding between the clients. In the event any party causes the mediator to be served with a subpoena or other process in violation of this paragraph, such party shall pay the mediator's reasonable costs and expenses and attorney fees incurred in any arbitration or before any trial court or appellate court in resisting such subpoena or other process.

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, writings and documentation as may be requested by the mediator or the other client. **Both clients acknowledge the existence of [ORS 107.089](#) which provides for the mandatory exchange of information upon request of either party.** The clients may mutually agree to waive the right to exchange documentation if both of them choose to do so. Each party is entitled to require the disclosure of any relevant information, writings and documentation as a condition of proceeding with mediation.

Any documentation provided to the mediator by either client will be made available to both clients and their respective attorneys, except that private emails from one client to the mediator will not be shared. The mediator uses ShareFile to facilitate the secure exchange of documents provided by the clients, as well as to securely send drafts of pleadings to the clients. Both clients will have access to the same ShareFile account and can access any document uploaded by either party, by the mediator, or by a client's attorney. The mediator will add a client's attorney to ShareFile at the request of a client, and the attorney will have the same access to all documents in the ShareFile account.

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. The clients agree that the mediator may discuss the clients' mediation process with any attorney that either client may retain as individual counsel and that such discussions will be billed as described in Paragraph 6 below. 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, discovery 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 \$425 per hour. **There is a minimum charge of .2 (two-tenths of an hour) for all services provided and all actions taken on your case, including emailing summaries of the mediation sessions and reviewing materials provided in advance of mediation; however, time spent in excess of .2 will be rounded to the nearest .1 (one-tenth of an hour).** The mediator may 'no charge' certain activities related to your case, but is not required to do so.

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 email. 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 credit 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.

Please indicate which email addresses should be used for delivering bills:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Email

\_\_\_\_\_  
Name

\_\_\_\_\_  
Email

Any statement of predicted fees is an estimate only and should not be relied on by the clients. The parties can agree mediation fees will be split evenly, unevenly, or paid by just one client. However, the clients shall be jointly and severally liable for the mediator's fees and expenses, which means the mediator can seek full payment from either client. **If one client fails to make their share of the payment, the mediator will 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 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 a QDRO attorney of their own choosing. The QDRO attorney is typically hired jointly by both parties during the mediation process. **Although the QDRO attorney is typically hired jointly by the parties in the mediation process, the QDRO attorney represents the mediator in the preparation of the QDRO and related documentation and does not represent either client.** 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 QDRO attorney.

8. **TAX INFORMATION.** The mediator is not an accountant or tax expert and cannot offer tax advice. Any discussion of taxes or tax implications in mediation is only to help clients generally assess their situation and/or identify issues and should not be relied on as tax advice. The clients acknowledge there are often significant tax consequences associated with domestic relations cases. The clients are strongly encouraged to obtain tax advice as part of this process and 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 or similar programs. This also applies to any 'tax discounting' which may be done as part of the division of assets and liabilities.

9. **DATA SECURITY AND INFORMATION PRIVACY.** The clients and mediator are authorized to use electronic means, including email, to communicate about the case, including the transmission of digitized documents. You recognize that due to the nature of the internet and computers, there is a risk that emails and other electronic communications may be intercepted, accidentally misdirected, and/or read by third parties. Absent an express request, the clients and mediator are authorized to use such means for communications, including confidential communications.

The mediation process involves the exchange of documents. A link will be provided to securely upload documentation. **Do not transmit personal or sensitive information via email, including Social Security Numbers, credit card numbers, banking information, etc., via email. Sending this information via email is done at your own risk.** Due to the risk of viruses, etc., no information will be accepted on a thumb drive.

10. **AGREEMENTS.** It is important in mediation that clients have the ability to sufficiently consider settlement proposals before reaching binding agreements. To that end, both clients stipulate that verbal agreements reached in mediation are not legally binding unless and until they are reduced to writing and signed by both clients and their respective attorneys (if applicable). To the extent permitted by law, each client waives any right they may have under *In re Haggerty*, 280 Or. App. 733 (2016) to file a motion to enforce oral agreements reached in mediation.

11. **PRESERVATION OF STATUS QUO.** **By signing this agreement, the clients agree to be bound by the terms of [ORS 107.093](#) during the pendency of the mediation.** “During the pendency of the mediation” means the time between signing this agreement and the earlier of the entry of a General Judgment (and QDRO if applicable), or either client or the mediator terminating the mediation. This means, amongst other things, that neither client will make any changes to any beneficiary designations, allow any policy of insurance to be changed or lapse, or make any extraordinary expenditures except unless they have written permission of the other client or as may be permitted by ORS 107.093. **Violation of this paragraph may be grounds for terminating the mediation at the election of either party or the mediator.**

\_\_\_\_\_  
Client  
Date: \_\_\_\_\_

\_\_\_\_\_  
Client  
Date: \_\_\_\_\_