

AGREEMENT TO MEDIATE

This is an agreement between or among the undersigned Parties to this mediation, including their representatives, if any, (the "Parties"), and between the Parties and John P. "Jack" Wade (the "Mediator"). The Parties agree to enter into mediation conducted by the Mediator with the intention of attempting to reach a consensual settlement of their dispute.

1. The Parties understand that the purpose of mediation is to attempt to find a mutually acceptable resolution of the dispute through cooperative attempts to solve the problems that presently exist between or among them. The Parties understand that settlements and compromises are dependent upon the consent of the Parties, that the Mediator is an impartial facilitator, and that the Mediator may not impose or force any settlement on the Parties.
2. In order for the mediation to be successful, open and honest communications are essential. Accordingly, statements, responses to inquiries, and representations by the Parties will be complete to the extent relevant to the process of settlement and will be accurate.
3. Except as provided in paragraph 4 below or as otherwise required by law, the mediation proceeding and all information obtained by the Parties and the Mediator during the course of the mediation proceeding will be treated as strictly confidential in the sense that they will not be shared with entities other than the Parties and the Mediator without the express consent of the Mediator and the Parties.
4. The exceptions to the confidentiality provisions in paragraph 3 above are: a) this Agreement to Mediate and any agreement made by the Parties as a result of the mediation may be used in any relevant proceeding to enforce the respective agreement; b) inadmissibility of evidence of conduct or statements will be determined under the applicable rules of evidence; c) discoverability of information obtained or used in the mediation will be determined under the applicable rules of civil procedure; d) in some areas, the law may require certain disclosures whether or not the information was first obtained in mediation, such as, but not limited to, disclosures concerning child abuse, fraud, or a planned future crime; e) in the case of government agency disputes, open meetings statutes may apply; f) except as otherwise provided by law, information already known to a Party or the Mediator, or properly coming to a Party or the Mediator later outside of the parameters of this mediation will not become burdened by mediation restraints beyond any duty of the Parties and the Mediator to keep confidential the fact that it was disclosed or used in mediation; g) the Parties and the Mediator will be permitted to make any reports, notifications, or disclosures required by law or established by applicable rules or programs; h) the Mediator will be permitted to disclose information that he believes is necessary to establish a claim or defense or to respond to allegations in any proceeding concerning the Mediator, or to secure legal advice about his compliance with his responsibilities.
5. The Parties agree not to call the Mediator as a witness to any proceeding and not to subpoena or otherwise seek discovery of any information in the Mediator's possession. To any extent that any law permits the Parties to call the Mediator as a witness or to subpoena or otherwise seek discovery from the Mediator, the Parties waive the right to do so. If any Party attempts to call the Mediator as a witness or to subpoena or otherwise seek discovery from the Mediator, that Party will be responsible for all resulting liabilities, costs, and expenses, including reasonable attorneys' fees and the reasonable value of the Mediator's time incurred by the Mediator in resisting that attempt whether or not the Mediator is successful in doing so. If any Party chooses to submit a confidential written statement to the Mediator, the other Parties agree that they will not make any attempt to subpoena or otherwise discover that statement, whether in the possession of the Mediator or of the Party submitting the statement.

6. The Mediator does not offer legal advice in this mediation and his services in this mediation are not legal services. The Mediator's services in this matter are distinct from his law practice. Neither the client-lawyer relationship nor the protections of that relationship will exist between the Mediator and any Party in this matter. The Mediator's role is to aid the Parties in seeking a resolution of their dispute. Any Party has the right to be represented by legal counsel to whom they can address any questions concerning the construction of any agreement or any question of law. The Parties understand that any agreement reached in mediation can have a significant effect upon their rights. The Mediator will not, during or following the mediation proceeding, represent any Party in connection with the matter in which the mediation proceeding was conducted.

7. In the event that the parties request that the Mediator participate in memorializing any settlement agreement reached by the parties, it is understood and agreed by all parties that the Mediator will be acting only as a scrivener (writing down what the parties have agreed to.). Each participant is advised that if an agreement is reached as a result of this mediation and the mediator assists in the preparation of a written settlement agreement, then each participant should have the settlement agreement independently reviewed by their own counsel before executing the settlement agreement.

8. Any Party may terminate the mediation at any time. The Parties agree, however, that the subject of termination of the mediation by one or more of the Parties is a proper one for discussion. The Mediator may terminate the mediation in the event that the Mediator determines that any of the Parties is not acting in good faith; that further discussions would not likely be productive; that the mediation proceeding is, or is likely to become, inappropriate, unfair, or detrimental; that the case is unsuitable for mediation; or that one or more of the Parties is unwilling or unable to participate in the mediation process in a meaningful manner.

9. The Parties agree to pay an administrative flat fee of \$175.00 the fee of the Mediator, which is \$300.00 per hour, for any mediation session and for any time spent in pre- and post-session work by the mediator. The Parties agree to reimburse the Mediator for any reasonable expenses incurred by the Mediator. The fee and expenses, if any, will be due and payable within ten (10) business days following the receipt of the Mediator's invoice. Any agreement between or among the Parties as to responsibility for the fee and expenses of the Mediator will not affect the Mediator's right to collect any or all of the fee and expenses from any Party.

10. The Mediator will not be liable to any Party for any act or omission in connection with any mediation conducted under this Agreement to Mediate. Activity of the Mediator is deemed the performance of a judicial function and for such acts the Mediator is entitled to judicial immunity.

I have read, understand, and agree to each of the provisions of this Agreement to Mediate. I consent to the Mediator's service in this matter.

Party	Date	Attorney for Party	Date
Party	Date	Attorney for Party	Date

I hereby agree to serve as the Mediator under the terms set forth above.

Mediator	Date
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