

AGREEMENT TO MEDIATE

- A. This Agreement to Mediate is entered between _____ and _____ (herein-after referred to as “the parties”) and Karen L. Keyes, Member, Arlington Collaborative Law PLLC (hereinafter referred to as “the mediator”).
- B. The parties are contracting to mediate the following issues that have arisen between them: comprehensive marital settlement on all issues relating to the marriage and separation.

This agreement reflects the commitment of each party to negotiate fairly, honestly, respectfully, and equitably throughout the mediation process.

- C. The parties understand and agree to the following:
1. Mediation is a process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution on their dispute.
 2. The mediator acts as a facilitator, not an advocate judge, jury, counselor, or therapist. The mediator assists the parties in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping parties reach voluntary agreements. The mediator uses a facilitative approach. A facilitative mediator guides the parties’ conversation and discussion of issues that are important to them, without providing an opinion or judgement regarding the merit of the claims or the likely judicial outcome. The mediator can assist the parties in assessing the strengths and weaknesses of their case. The mediator will not tell the parties what to do or suggest a particular outcome.
 3. The mediation process provides for: an opportunity for all parties to be heard; the identification of issues to be addressed; the generation of alternatives for resolution and, if desired by the parties, the drafting of a written document reflecting the agreement of the parties. While most mediation sessions involve both parties meeting together, at the discretion of the mediator, to facilitate the resolution of a dispute, the mediator may suggest meeting with individual parties in separate sessions, involving counsel for the parties and/or consultants as part of the mediation process.
 4. The mediator may provide the parties with legal information, forms, copies of statutes, etc. The mediator does not provide legal advice. Legal advice includes information about likely court outcomes, the relative legal merits of a party’s case, or the application of specific legal principles to factual situations. Each party to the mediation can consult with independent legal counsel at any time and is encouraged to do so.
 5. Use of E-Mail. In the regular course of Mediation, the mediator and the mediator’s staff utilize e-mail for correspondence. The Internet cannot be regarded as a wholly secure medium, so if you have something to communicate that is highly sensitive or confidential, you should consider alternate means of communication. By signing this agreement, each party consents to the use of e-mail correspondence between you and the mediator. The mediator makes every attempt to respond to e-mail promptly. The mediator tries to reply within 48 hours during the work week, unless an “Out of Office” message is

received, in which case the message will indicate when an e-mail reply may be expected. The parties agree that the mediator may communicate with us at the following e-mail addresses and if a party contacts the mediator by e-mail, the mediator may respond to any email address the party uses: _____ and _____.

Your password to access secure documents is: _____

6. All principal parties need to agree to the presence, degree of involvement, and role of any non-parties proposed for inclusion in the mediation process. If the non-party is a child, the parties must discuss in detail the child's involvement and the questions to be asked so that the child is not put into the middle of the dispute.
7. Any document signed as a result of this mediation process may affect the legal rights of the parties, be legally binding, have serious consequences and may not be modifiable. Therefore, each party is encouraged to retain and consult with legal counsel throughout the mediation process and prior to signing any agreement. However, a written mediated agreement signed by the parties shall not be confidential unless the parties otherwise agree in writing.
8. All memoranda, work products, and other materials contained in the case files of a mediator are confidential. Any communication made in, or in connection with, the mediation, which relates to the controversy being mediated, including screening intake and scheduling a mediation session, whether made to the mediator or the mediator's staff, to a party, or to any other person, is confidential. Confidential materials and communications are not subject to discovery in any judicial or administrative proceeding except:
 - i. this Agreement to Mediate;
 - ii. where all parties to the mediation agree, in writing, to waive the confidentiality;
 - iii. in a subsequent action (including, but not limited to a formal complaint or suit) between the mediator and a party to the mediation for damages arising out of the mediation, or for payment of mediation services;
 - iv. statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and used in the mediation;
 - v. where a threat to property or inflict bodily injury or psychological harm to others or self is made, (the mediator may also contact the police or other appropriate individuals in such instances);
 - vi. where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime (the mediator may also contact the police or other appropriate individuals in such instances);
 - vii. where there is a complaint or suit brought against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint;
 - viii. where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation;
 - ix. where communications are sought or offered to prove or disprove any of the grounds in a proceeding to vacate a mediated agreement;
 - x. as provided by law or rule, to include, but not be limited to:

- (1) the mediator has reason to suspect child abuse or neglect (the mediator may also contact the police or other appropriate individuals in such instances); and
 - (2) if the court refers the case for mediation, in reporting on the outcome of the dispute resolution proceeding to the referring court (the report shall indicate whether an agreement was reached, the fact that no agreement was reached, or the fact that the orientation session or mediation did not occur).
9. The parties agree that they shall not request, try to compel, or subpoena the mediator, or any employee of the mediator's office, to testify or produce any documents, in discovery or any judicial or administrative proceedings. The mediator's file belongs to the mediator.
10. Despite the foregoing,
 - A. the parties understand the mediator may disclose allegations of child abuse, threats of physical injury, and any other information the mediator is required by law to disclose; and
 - B. the parties may discuss what was said and done in mediation with their spouses, family, advisors, and others, unless they agree otherwise by amending this Agreement to Mediate in writing. Even if so amended, the parties may always discuss what was said and done in mediation with their respective attorneys.
11. The parties are urged to discuss the subject of confidentiality with his/her respective attorney.
12. Each party has notified the mediator of any cases pending in any court with any other party in this mediation, and of any deadline for filing a mediation report with the court. Parties must keep themselves informed of any court or other hearing dates or other obligations set by the court or other agency in their case. Referral to and/or participation in mediation does not halt or delay the schedule of a court or administrative case until a settlement agreement is filed and properly brought by the parties to the attention of the court or agency.
13. Each party shall disclose all relevant and material information and documentation necessary to reach a just agreement. In property distribution and/or support matters, this includes, but may not be limited to, assets, income, liabilities, and expenses reflected in current and projected monthly budgets.
14. At any time before mediation is completed, either party may choose another alternative for resolution of the dispute, such as litigation. It is understood that the mediator may terminate the mediation for any reason including, but not limited to, it becoming evident that there is a failure to participate in good faith on the part of any party, failure to reveal information or produce supportive data, when undue pressure is placed upon the other party or failure of a party to pay for mediation services. Any party to this Agreement, including the mediator, may at any time withdraw from the mediation for any reason and agrees to notify the mediator and all parties, in writing, of the intent to withdraw.

15. If the parties are represented by separate attorneys, and the parties, the attorneys and the mediator agree, the mediator may draft the settlement document to be sent to the attorneys to advise the parties. The mediator may also prepare a list of preliminary agreements reflected in a memorandum of understanding for the parties. The memorandum is not intended to be in the form that an attorney might otherwise use in drafting a contract for the parties' signatures. The memorandum should be reviewed by the parties' attorneys prior to the preparation of any contract prepared by the attorneys. Any document reflecting a settlement should not be signed by the parties unless they each have a separate attorney first review it and advise them accordingly.
16. To the extent there are any new issues raised by either attorney, the parties may return to mediation for further negotiation.

D.

1. The Mediator will be compensated at the rate of _____ per hour for the mediation sessions and _____ per hour for any time involving this mediation spent by the mediator outside of a mediation session. The parties understand that Arlington Collaborative Law PLLC shares office space with, and is not in business with, Bean, Kinney & Korman, P.C. and Caulkins & Bruce, P.C.
2. The parties agree to pay the mediator for all time spent on this matter including, but not limited to, telephone and office conferences, reviewing documents, drafting papers, travel and wait time. The parties agree to provide forty-eight hours' advance notice (weekday) by phone and e-mail of any cancellation otherwise the attorney shall have the right to bill for scheduled appointments without 48 hours' notice of cancellation. The parties accept that the minimum time charge will be one-tenth of an hour. Time will be charged in the following increments only: .10 (six minutes or less), .20 (7-12 minutes), .25 (13-15 minutes), .30 (16-18 minutes), .40 (19-24 minutes), .50 (25-30 minutes), .60 (31-36 minutes), .70 (37-42 minutes), .75 (43-45 minutes), .80 (46-48 minutes), .90 (49-52 minutes), 1 hour and so on. The parties agree to pay all costs and expenses of this matter, including but not limited to, _____ cents per page for copying, _____ per page for outgoing telefacsimiles, postage, messenger fees, travel, parking and stop payment fees.
2. An initial advance of _____ shall be paid by the parties upon signing the Agreement to Mediate. **This advance is not a flat fee, nor an estimate of the total fees and costs for this matter. It is simply an advance from which fees and expenses will be paid.** The advance will be held in the mediator's trust account until billed. It does not earn interest either for the mediator or for the parties. **In the event the advance drops below _____, the parties must renew the fee advance in the amount of _____.** In the event the mediator has agreed to do work that will require substantial additional time, an additional advance may be requested.

E. The Mediator will send a pdf of the monthly statement to both parties. The parties shall agree between themselves the source of payment for these fees. However, they remain jointly and severally liable for the foregoing fees and expenses. If the fee advance needs to be renewed, or there is a balance due, the email for payment by credit card will be _____'s e-mail. Any refund of the remainder of a fee advance will be issued to _____ by check. The parties shall notify the mediator of updates to their phone number, mailing address, email address, and any other contact information. The mediator will use the most recent contact information provided by the parties.

1. Each month, each account will issue an itemized invoice from the mediator listing all charges to be deducted from the advance. The parties agree that if there are any questions about the accuracy or propriety of a billed item, the issue shall be raised with the mediator within 10 days of receipt of the invoice.
2. In the event the advance is depleted, the invoice will show a balance due. The parties understand and agree that any balance due is payable in full upon receipt of the invoice by the parties. The parties further understand and agree that the advance must then immediately be renewed in an amount equal to the initial advance.
3. Failure to pay any balance due shown and/or to renew the advance within 20 days of receipt of the invoice shall entitle the mediator to cease providing mediation services. Termination of mediation shall not excuse the parties' responsibility to pay for services rendered.
4. If any portion of the parties' fee advance remains at the conclusion of the matter, the mediator shall refund it as outlined herein.

This Agreement to Mediate has been signed by the parties and the Mediator.

Party

Date

Party

Date

Karen L. Keyes, Mediator

Date

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