

AGREEMENT TO MEDIATE

This Agreement is among _____
and _____ (hereinafter the “Parties”) and
Michael E. Sumner (hereinafter “Mediator”). The Parties currently have a
case pending in _____ County and desire to engage Michael E.
Sumner to mediate their case to possibly reach a consensual settlement of
their dispute. The Parties and Mediator agree as follows:

1. Unless otherwise agreed as part of a settlement reached at mediation, the Parties agree to equally share the cost of mediation. The charges for the Mediator are \$300 per hour (with a three hour minimum), and a one-time administrative fee of \$200. Unless payment for the mediation is made at the conclusion of the mediation session by the Parties, then the ultimate responsibility for payment rests with the attorney for each respective Party.
2. The Mediator is a neutral facilitator. The Mediator will assist the parties to reach a settlement of their dispute. The Mediator will facilitate communication among the Parties and their counsel and assist in discussion of potential outcomes.
3. The Mediator will not offer legal advice nor will he provide legal counsel. Each Party is advised to retain his/her own attorney in order to be properly counseled about their legal interests, rights and obligations.
4. It is understood that 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.

5. While both Parties intend to continue with mediation until a settlement agreement is reached, it is understood that either or both Parties may withdraw from mediation at any time. It is agreed that if one or both Parties decide to withdraw from mediation, best efforts will be made to discuss this decision in the presence of both Parties and the Mediator. The Parties affirm that they have the capacity to conduct good faith negotiations and to make decisions for themselves including a decision to terminate the mediation if necessary.
6. If the Mediator determines that it is not possible to resolve the issues through mediation, the process can be terminated once this has been conveyed to the Parties and confirmed in writing.
7. If an agreement is reached, the Mediator will prepare a Memorandum of Understanding (the "MOU") that will outline the terms of the agreement. Each Party will review the MOU with his/her attorney before the MOU is signed and executed by the Parties.
8. 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 sign a written agreement otherwise.
9. The Mediator will not reveal the names of the Parties nor anything discussed in mediation unless expressly requested to do so by all 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.
10. The Parties agree that they will not at any time, before, during, or after mediation, call the Mediator or anyone associated with the Mediator as witnesses in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to call the Mediator or anyone associated with the Mediator as witnesses, that right is hereby waived.

11. The Parties agree that they will not subpoena or demand the production of any records, 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. 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 may incur in such an action (including attorney's fees) plus \$325 per hour for all the time that is incurred by Mediator to quash the subpoena.

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

Michael E. Sumner, Mediator

Party DATE

Party DATE

Party DATE

Party DATE

Attorney DATE

Attorney DATE