



RESOLUTION SERVICES

SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

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CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC

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## AGREEMENT TO MEDIATE

REVISED 01/01/20

### CLIENT INFORMATION

The parties to this agreement are \_\_\_\_\_  
and \_\_\_\_\_ called "Clients"  
and CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC called "Mediators." The Clients request that the  
Mediators assist them in resolving a dispute relating to \_\_\_\_\_  
\_\_\_\_\_. The Mediators have agreed  
to work with the Clients subject to the following terms and conditions:

### ROLE OF THE MEDIATORS

- 1) Mediation is a voluntary process. It is an alternative to a decision by a judge or arbitrator. It is also an alternative to the use of lawyers as intermediaries to negotiate on behalf of their clients. The role of mediators is to help their clients engage in constructive and creative communication and exploration of the issues to reach a mutually acceptable resolution. The Mediators will not make decisions about "right" and "wrong" or tell the Clients what to do.
- 2) The Clients have the ultimate responsibility for the content of their final agreement. The Mediators will not advise the Clients to accept or reject an agreement.

### MEDIATORS' AUTHORITY

- 3) The Mediators do not have authority to impose a settlement upon the Clients but will attempt to help them reach a satisfactory resolution of their dispute while following the CDRS Mediation Rules and Procedures.
- 4) The Mediators may hold joint and separate meetings with the Clients as they deem necessary. The Mediators may discuss any statements made to the Mediators by one Client in a separate session with the other Clients unless the Client making the statement specifically requests that the information remain private.
- 5) If this is a binding mediation, please refer to the special binding mediation rules and procedures of CDRS.

### FULL DISCLOSURE

- 6) Adequate, timely information is essential for the Clients to make informed decisions about the wisdom and fairness of an agreement. Therefore, each Client shall produce all information necessary for the Mediators to understand the issues and for the Clients to negotiate knowledgeably. This includes providing each other and the Mediators with all information and documentation that usually would be available through the discovery process in a lawsuit. The Mediators may require either Client to supplement such information. If necessary information is not available, the Mediators may suspend the mediation until the information is available. The Clients recognize that the failure to make full disclosure may jeopardize the durability of the agreement and permit a court to set it aside.

**MEDIATION, LAWYERS, AND COURT**

- 7) The Clients acknowledge that they have been advised by the Mediators that:
- i) They should each have separate legal representation and should consult privately with their respective attorneys for independent, legal advice. This advice may be necessary prior to signing this Agreement to Mediate, Notice of Mediation, during the mediation process, and prior to signing any agreement for the resolution of the dispute;
  - ii) Without review and advice by their own independent, legal counsel, they may be giving up legal rights to which they are entitled, or running risks of which they are not aware;
  - iii) They should seek independent tax advice from their attorneys or other qualified tax advisors to assess any possible tax consequences related to the issues involved in the mediation;
  - iv) Legal representation by a lawyer is not required at the mediation, however, an individual representing each client with full settlement authority must be present at all times during the mediation.
- 8) The Clients recognize that there may be alternative objective and subjective standards to measure the fairness and effectiveness of a resolution to the issues in dispute. The goal of mediation is a lasting agreement that is acceptable to all participants. The outcome of mediation may be different from the result that could be obtained from a court resolution of the dispute.

**PRIVACY**

- 9) Mediation sessions are private. Representatives of the Clients and other persons may attend only with the permission of the Clients and with the consent of the Mediators.
- 10) In order for mediation to work, open and honest communications are essential. Therefore, all written and oral communications of the Clients will be treated as privileged settlement discussions. As such they shall not be admissible as evidence in court. Specifically, but without limiting the scope of this paragraph, the Clients agree that they will not only rely on or introduce as evidence in any arbitral, judicial or other proceeding:
- i) Views expressed or suggestions made by another Client with respect to a possible settlement of the dispute;
  - ii) Admissions made by another Client in the course of the mediation proceedings;
  - iii) Proposals made or views expressed by the Mediators; or
  - iv) The fact that another Client had or had not indicated willingness to accept a proposal for settlement made or presented by the Mediators.
- 10) The Mediators will not reveal anything discussed in mediation to anyone except the Clients without the permission of all Clients unless they are required to do so by law. The Mediators may be required by law to reveal information if they believe that a child is in need of protection or a person is a danger to self or to others.
- 11) At no time shall the Clients call the Mediators or anyone employed by the Mediators as a witness or deponent in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to call the Mediators or their employees as witnesses, the Clients hereby waive this right.
- 12) The Clients shall not subpoena or demand the production of any records, notes, documents, or work product of the Mediators in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to demand the production of this information, the Clients hereby waive this right.
- 13) If a Client causes a subpoena to be issued violating the terms of paragraphs 11 or 12, the responsible Client shall pay the Mediators' attorneys' fees and costs incurred to resist the subpoena and enforce the privacy terms of this agreement.
- 14) There are two exceptions to these privacy provisions. First, this agreement to mediate, and any written agreement made and signed by the Clients, as a result of mediation, may be used in any relevant proceeding, unless the Clients agree in writing not to do so. Second, the Mediators may testify and offer records, notes, or work product from the mediation in any legal or administrative proceeding between the Mediators and a Client regarding the Mediators' fees and services.

**TERMINATION**

- 15) All Clients intend to continue with mediation until reaching a settlement agreement. However, because mediation is a voluntary process, any Client may withdraw from mediation at any time. All Clients reserve the option, if a satisfactory settlement is not reached, to pursue other available legal options.
- 16) The Mediators may end the mediation if any Client fails to make full disclosure of necessary information.
- 17) The Mediators may end the mediation if, in their judgment, further efforts will not contribute to a resolution of the dispute.
- 18) Construction Dispute Resolution Services, LLC shall be entitled to payment in full for services rendered up to and including the termination of the proceedings. (See paragraph 22)

**POSTPONEMENT AND CANCELLATION**

- 19) Upon request by a client, the mediators shall determine if there is good cause or compelling circumstances that would merit a postponement or cancellation.
- 20) Non-receipt of the initial retainer or required documents by the due date may be considered a cause for the mediators to postpone or cancel the mediation.
- 21) Please refer to the "Fees and Costs" section of the CDRS website for cancellation and postponement fees. Any mediation that is cancelled or postponed less than 72 hours prior to the scheduled mediation is subject to an additional \$300.00 fee which is payable by the client(s) responsible for the cancellation or postponement.

**COST OF MEDIATION**

- 22) The Mediators shall be compensated based upon the amount of time spent on the case plus reimbursable out of pocket expenses. The rate of compensation is \$\_\_\_\_\_ per hour plus applicable tax. A minimum of five (5) hours shall be charged for each mediation. The Mediators' time includes all time on jobsites, in mediation sessions and all time spent outside mediation sessions on research, preparation, document drafting, phone conferences, etc.
- 23) There shall be a \$450.00 Case Filing Fee on each mediation case. (\$700.00 in California and Maryland)
- 24) There shall be an initial retainer of \$\_\_\_\_\_. This retainer shall be due and payable prior to the beginning of the mediation, on or before \_\_\_\_\_. The Mediators shall use the retainer to pay their fees and reimburse themselves for all out-of-pocket expenses.
- 25) In addition to the hourly mediators' fee, additional out-of-pocket expenses will be charged. Reimbursable out-of-pocket expenses include, but are not limited to: conference room rental, if applicable, long-distance telephone charges, copying costs, mileage at the current IRS rate for cents/mile, special mailing and delivery fees (express mail and messenger), etc.
- 26) The total cost of the mediation shall be shared by the Clients as follows:
  - Divided equally between the Clients.
  - Paid in full by \_\_\_\_\_.
  - Other: \_\_\_\_\_.
- 27) All sums due under this contract shall be paid to Construction Dispute Resolution Services, LLC. If a Client requests a detailed billing including time records, it will be provided within thirty (30) business days. Any sums due that are not covered by an initial retainer shall be paid immediately at the end of the final mediation session.
- 28) Special payment arrangements may be made prior to the mediation through the CDRS Administrator. All special payment arrangements must be in writing and signed by the involved parties and the CDRS Administrator.

**CLIENTS:**

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

\_\_\_\_\_  
Print Name

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

\_\_\_\_\_  
Print Name

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

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Print Name

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

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

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Print Company Name

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Print Company Name