

NO. \_\_\_\_\_

IN THE MATTER OF  
THE MARRIAGE OF

\_\_\_\_\_  
AND  
\_\_\_\_\_

AND IN THE INTEREST OF  
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IN THE DISTRICT COURT OF

\_\_\_\_\_ COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**AGREEMENT TO MEDIATE**

This is an agreement between \_\_\_\_\_, Petitioner, and \_\_\_\_\_, Respondent, and both parties agree as follows:

1. Petitioner and Respondent agree to participate in good faith in a mediation proceeding for the purpose of determining if the claims among them in the litigation of this case can be settled. This means that all parties are willing to be open minded and willing to compromise to some extent their announced positions.
2. The mediation proceeding shall be treated as an alternative dispute resolution procedure under Chapter 154 of the Texas Civil Practice and Remedies Code. Lori M. Kern, who is an impartial third party, shall serve as the mediator.
3. This mediation proceeding shall commence at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, and shall continue until completed, which could extend through the entire day.
4. Petitioner and Respondent acknowledge that they are represented by counsel in mediation, and each of their attorneys is in attendance at the mediation proceeding.
5. Lori M. Kern shall encourage and assist the parties in reaching a settlement but may not compel any party to enter into a settlement agreement. For the

purposes of this mediation, Lori M. Kern is not a legal advisor to either party, and cannot provide legal advice to any party involved in mediation.

6. All communications made during the mediation proceeding shall be deemed to be settlement communication within the meaning of Rule 408 of the Texas Rules of Evidence.
7. The mediation fee is \$475.00 per party for a half-day of mediation (4 hours), and \$950.00 per party for a full day of mediation (8 hours). Each party will be responsible for one-half (1/2) of his/her respective fees for mediation. Overtime beyond the initial time booked will be billed at \$150.00 per hour per party, and is due in full by cash, cashier's check, money order, attorney or firm check, or credit card on or before the conclusion of mediation.
8. Mediation is a settlement procedure which should remain confidential and privileged, and statements made in mediation shall not be used at any trial relating to this dispute, even in cross-examination. Nevertheless: evidence that would be discoverable and useful at trial had the contemplated mediation proceeding not been held, does not lose its character as discoverable or admissible at trial merely because it is used in mediation.
9. The settlement agreement we hope to reach in mediation will be enforceable, and to that extent is not secret. In some circumstances, the law requires certain disclosures, such as a disclosure of child abuse or neglect, and the mediator is obligated by law to report such disclosures to the appropriate authorities. Such specific issues are not covered by the confidentiality of mediation.
10. Any drafts of settlement agreements will be taken up by the mediator at the conclusion of the mediation and destroyed, except for the final mediated settlement agreement.
11. The mediator will not be called as a witness or be otherwise involved in any ongoing litigation, should settlement fail. The mediator's records, notices, or other documents held by the mediator in conjunction with this case shall not be subpoenaed.

If all of the above is agreeable, please execute this statement of agreement, so each of the parties and the mediator can preserve a copy in their files.

SIGNED on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
NAME  
Petitioner

\_\_\_\_\_  
NAME  
Attorney for Petitioner

\_\_\_\_\_  
NAME  
Respondent

\_\_\_\_\_  
NAME  
Attorney for Respondent