

# GARNER MEDIATION SERVICES, LLC



## Agreement to Mediate

This is an agreement by and between \_\_\_\_\_ and \_\_\_\_\_ (the “Parties”), and Garner Mediation Services, LLC, represented by Greg Garner and \_\_\_\_\_ (the “Mediators”). By signing this document, the signatories agree:

1. **Mediators.** Greg Garner and \_\_\_\_\_ will conduct the mediation as unbiased and neutral third-persons who will help the Parties to negotiate their own settlement. The undersigned Parties acknowledge that the Mediators have no authority to compel anyone to participate in mediation or to settle issues.
2. **Scope.** The subject of this mediation is \_\_\_\_\_. The Parties agree to make full and honest disclosure to each other and to the Mediators of all information and documents relevant to the subject of the mediation and all related pending issues between the Parties.
3. **Times and Place.** The Parties agree that the mediation will occur by Zoom.us video conference (Meeting ID XXX-XXX-XXX) beginning at \_\_\_\_\_ on \_\_\_\_\_ 2020. The Mediators expect that the mediation may take up to 2 hours. Greg Garner will email a link to the conference shortly before it is due to begin.
4. **Good Faith.** The undersigned Parties agree to negotiate in good faith, and consider all options presented to them by the Mediators. The Parties should speak honestly and respectfully, and listen openly. Parties should engage in identifying key issues and promoting mutual clarity about these issues.
5. **Mediation is Not Legal Representation.** No attorney-client relationship exists between the Mediators and any Party. The Parties understand that Mediators:
  - do not decide who is right or wrong, or tell either party what to do;
  - do not provide legal advice or legal representation to any Party;
  - do not advise or represent the Parties jointly;
  - have no duty to find the best possible solution for any or all Parties;
  - cannot supply legal information that might assist one Party against the other.
6. **Memorandum of Understanding (MOU).** If the Parties reach a resolution, it may be documented in a written agreement or MOU, the contents of which shall be the sole responsibility of the Parties. The Parties have the right to ask attorneys or other professionals to review any negotiated agreement or MOU before signing it.
7. **Mediation is Voluntary.** No Party is required to agree to anything through this mediation, and no oral agreement is enforceable unless reduced to a written agreement signed by the Parties. Any Party may withdraw from the mediation at any time in good faith upon giving notice of the intention to do so. If the Mediators determine that it is not possible to resolve the issues presented in the mediation, they may terminate the mediation once this determination is conveyed to the Parties.
8. **Confidentiality.** Mediation is a confidential process as established by the Colorado Dispute Resolution Act: CRS 13-22-301, et seq (the “Act”). Therefore:
  - Every person participating in or witnessing this mediation shall treat all written and oral communications, negotiations and statements made in connection with this mediation as privileged settlement discussions, which are absolutely confidential.
  - No person participating in or witnessing this mediation will make any stenographic, audio or video record of the mediation session or any communications related to it.
  - The Mediator will not reveal the Parties’ names or matters discussed during the mediation, unless authorized by the Act.

- Information disclosed by a Party to Mediators that is designated as confidential will not be disclosed to other participants in the mediation without consent of the disclosing Party.
- The Parties and their counsel agree that they will not, at any time, before, during or after mediation, call the Mediators or anyone associated with Garner Mediation Associates, LLC as witnesses in any legal or administrative proceeding concerning the subject of this mediation, and hereby waive any right otherwise asserted to do so.
- The Parties agree not to subpoena or demand the production of any records, notes, work product or similar materials from the Mediators in any legal or administrative proceeding concerning the subject of this mediation, and hereby waive any right otherwise asserted to do so.
- If any Party or counsel attempts to obtain any discovery from the Mediators by subpoena or otherwise, the Mediators will move to oppose such discovery, and the Party seeking such discovery agrees to reimburse the Mediators for whatever expenses they incur in such action (including costs and reasonable attorney's fees) and to pay \$200 per hour for the Mediators time devoted to such matters.

Pursuant to the Act, Mediators are not required to maintain confidentiality if a mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of 18 years. Additionally, this Agreement to Mediate and any written MOU made and signed by the Parties through this mediation are not confidential, and may be offered as evidence in any judicial or administrative proceeding unless the Parties enter into a written agreement expressly prohibiting or limiting such use.

9. **Pre-Mediation Communications.** The Parties agree to communication and document exchange via e-mail and other electronic means. The Parties may submit Position Statements to each other and to the Mediators prior to the mediation. Each party may also submit a Confidential Settlement Statement to the Mediators, not provided to the other Party or their attorney. Any Confidential Settlement Statement should be the only confidential communication about the subject of the mediation that either party makes to the Mediators before mediation begins. The Parties and counsel understand that Mediators routinely destroy all materials related to mediations, including copies of documents, work product, notes, drafts and electronic communications after the mediation session, and the Parties and counsel hereby consent to this record non-retention policy.
10. **Fees.** Garner Mediation Services, LLC will charge \$200 per hour (\$100 per party), and will require a two-hour minimum fee (\$400) be paid prior to the start of the mediation. The two-hour fee only becomes due if the mediation session actually begins. If the mediation commences and lasts longer than two hours, any additional amounts are due, in pro rata increments of 30 minutes, when the session ends. The Mediator requires each party to contribute 50% of the total fee, unless the Parties have agreed to do otherwise.

**All persons present at or witnessing this mediation session must sign this Agreement to Mediate**

The undersigned understand and acknowledge each provision of this Agreement:

**Signature:**

**Signature:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Signature:**

**Signature:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Mediator:**

**Mediator:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date