

AGREEMENT FOR MEDIATION/SETTLEMENT CONFERENCE

The undersigned parties and/or attorneys agree to the following terms in connection with the alternative dispute resolution services (mediation and/or settlement conference) rendered by Howard R. Bartlett, of Bartlett, Pollock & Besk, PLLC, hereinafter referred to as the mediator:

1. **Role of Mediator.** While the mediator may express his personal opinions about the case and its potential outcome during the course of the mediation, the parties understand that the mediator is acting solely as mediator, does not provide legal counsel to either party, and has no attorney/client relationship with either party. It is recommended that the parties have legal counsel present during all phases of the mediation/settlement conference. The parties agree to hold the mediator harmless from any liability in connection with the services rendered under this agreement.

The mediator makes no guarantee, warranty or promise that a binding agreement will result from the mediation/settlement conference, although best efforts will be expended to help the parties bring about a resolution of their case and to reduce it to writing in compliance with CR2A.

If the parties agree to submit any issues to arbitration by the mediator, then in the absence of a separate written agreement, it shall be on the same terms as the original mediation/settlement conference, with the exception that fees for the arbitration process will be \$350.00 per hour, as set forth in paragraph 8 below.

2. **No Conflict of Interest.** Mediator is not aware of any facts likely to affect his impartiality as mediator in this case. He does not have any known financial or personal interest in the outcome of the proceeding, nor does mediator know of any contact that would affect his impartiality. However, given the volume of mediations that are limited to family law issues which are conducted by this office, it is likely that mediator has conducted mediations with the attorneys participating in this mediation or with other members of their firms, or that mediator may have participated in social functions or functions associated with professional organizations in which the attorney(s) involved in this matter have also participated. Any person who wishes further detail or who believes mediator may have had additional past relationships with parties, counsel or witnesses in this mediation should inform Bartlett, Pollock & Besk as soon as possible so that this may be disclosed.
3. **Communication with Mediator.** The parties understand and agree that the mediator may elect, at his discretion, to contact the attorneys for the parties in furtherance of the settlement process.
4. **Attendance of Parties/Attorneys/Third Parties.** It is our intention to have legal counsel prepare for and attend the mediation/settlement conference with us. We agree that we will both be present at the mediation/settlement conference.

Unless mutually agreed to by the parties or approved by the mediator, no third parties will be allowed to be present at the time of the mediation.

If we intend for third parties to be present, we must notify the other party and the mediator at least seven (7) days in advance of the mediation. If we do not provide timely notice, the third parties will be allowed to attend at the sole discretion of the mediator.

5. **Production of Information/Materials.** Each party is responsible for providing any and all information and/or documentation, which is provided to the mediator, to the other party in accordance with deadlines set forth in letters from the mediator, unless a document is confidential. In that case, the mediator's copy must be marked clearly on the front page that it is confidential and is not to be shared with the other party.

The mediator's policy is to return all notebooks and materials as submitted by each party to that party's attorney at the conclusion of the mediation/settlement conference, with the exception of the letter to the mediator and/or other materials as the mediator deems appropriate to retain. In the event that there is an arbitration as to the final documents pursuant to a CR2A, those materials may be resubmitted as needed.

No party may issue a subpoena to the mediator or request any disclosures from the mediator in any future proceeding except as to the existence of a written settlement agreement.

6. **Confidentiality.** The parties understand that the mediation/settlement conference proceedings are privileged and confidential to the same extent as proceedings under RCW 5.06.070, RCW 7.07 et. seq. and/or 26.09.015. Except for a written settlement agreement or offer of proof in conjunction with a request for attorney fees at trial, any statement made by any party, attorney or other participant shall in all respects be privileged and confidential and not reported, recorded, placed in evidence, made known to the trial court, or construed for any purpose as an admission, except for appraisals or other documents that would be admissible at trial.

In no event will the mediator's notes or file be subject to discovery, nor may either party call the mediator as a witness in litigation related to the mediated issues. No party may issue a subpoena to the mediator or request any disclosures from the mediator in any future proceeding.

7. **Full Disclosure.** Each party shall fully disclose all property and debts and all documents such as financial statements, income tax records, etc. requested by the other party as they may be relevant to the agreed-upon mediation issues.

8. **Fees.** The mediator's hourly rate is \$300 for time expended, and/or reserved by the parties, including preparation time, telephone calls, meetings and letters summarizing agreements or understandings arrived at following a mediation session. The mediator reserves the right to charge for costs, such as copying (\$.15 per page) or faxing (\$.50 per page). There will not be any refund in the event that the process is terminated or completed in less time than the hours which have been reserved. If the actual mediation/settlement conference goes longer than the hours covered by the fee deposit, that outstanding balance will be payable at the conclusion of the conference. Any unpaid balance at the conclusion of the conference will bear interest at the rate of 12% per annum.

At the time of scheduling the initial mediation/settlement conference session, the mediator will send a letter to the attorneys confirming the scheduling of the settlement conference/mediation and setting the required fee deposit. Unless otherwise agreed to by the mediator, in the event that the fee deposit is not received fourteen (14) days in advance of the mediation/settlement conference, the mediation/settlement conference may be canceled. Payment will be made in accordance with such letter, and in the event of subsequent mediation/settlement conference sessions, no later than the end of each session.

There will be a \$50 fee for returned checks.

The parties shall make payment as follows, unless the mediator is advised by the attorney(s) that the parties have reached an alternative payment arrangement:

By *: 50%
By *: 50%

I estimate two hours of preparation and eight hours for the conference, for total fees of \$3,000.00. A retainer of that amount is to be delivered to my office by noon on ***. If total involvement is more than ten hours, additional fees will be paid at the time of the settlement conference.

9. **Cancellation/Rescheduling Policy.** Because all arrangements for this mediation/settlement conference have been made through counsel, each party's attorney is ultimately responsible for payment of his/her client's share of the fees.

IF THE MEDIATION/SETTLEMENT CONFERENCE IS CANCELED OR RESCHEDULED LESS THAN FOURTEEN (14) DAYS, BY NOON ON ### , PRIOR TO THE DAY SCHEDULED FOR CONFERENCE, THE ENTIRE FEE DEPOSIT WILL BE RETAINED. IF THE NUMBER OF HOURS ARE REDUCED LESS THAN FOURTEEN (14) DAYS PRIOR TO THE DAY SCHEDULED FOR CONFERENCE, PARTIES AND ATTORNEYS WILL BE RESPONSIBLE FOR THE HOURS ORIGINALLY SCHEDULED. IF THE FEE DEPOSIT HAS NOT YET BEEN RECEIVED, A BILL WILL BE SENT TO EACH ATTORNEY FOR FEES FOR THE HOURS RESERVED.

Unless otherwise agreed in advance, if a party cancels and the other party wants to proceed with the session, the party canceling will be responsible for the cancellation fee.

By their signatures below, the parties and their attorneys accept responsibility for payment of the mediation/settlement conference fees incurred as set forth in this agreement.

10. **Waiver of Potential Conflict of Interest:** The signature of each party to this agreement constitutes a waiver as to any potential conflict of interest arising from the fact that Howard Bartlett, Lynn Pollock and Lawrence Besk are now operating as Bartlett, Pollock & Besk, PLLC.

Howard R. Bartlett, Mediator

Date