

# MATTHEW P. GOMEZ

*Attorney & Counselor at Law*

## **AGREEMENT TO MEDIATE/FEE AGREEMENT**

I, the undersigned, request that Matthew P. Gomez mediate \_\_\_\_\_ between myself and \_\_\_\_\_.

1. I understand that the role of the mediator is to assist in this dispute by discussing and clarifying the issues in an informal and confidential setting. I agree to cooperate in the mediation conferences held for the purpose of seeking a reasonable settlement of this dispute.
2. I am aware that I am responsible for protecting my own legal rights and property through any pending legal proceedings and, though the mediator is an attorney, will not rely on the mediator for legal advice or to make any decisions for me. The mediator is neither a judge nor an arbitrator, and, as such, has no authority to compel the parties to settle the dispute. I understand that it is advisable to employ independent legal counsel for advice throughout the mediation process.
3. I understand that the mediation process is to be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. I understand that the provisions of the State of Oklahoma shall apply to any mediation conducted hereunder. I further agree that I will not require the mediator to disclose to any third party any statements made in the course of mediation.
4. It is understood that we shall cooperate with each other and the mediator on working toward a mutually acceptable agreement to end our dispute.
5. Mediation is a form of settlement negotiation. Therefore, no statement or representation made at mediation is admissible as evidence in any subsequent litigation or arbitration. I agree to waive any rights to the records, person or testimony of the mediator, and I agree never to attempt to subpoena or require the mediator to testify or produce any records, notes or work product for any pending or future legal or administrative proceedings for any reason. If any litigating party should attempt to compel such testimony or production, said party shall be liable for and shall indemnify mediator for any liabilities, costs, and expenses (including attorney fees and lost professional time) incurred in resisting such compulsion. If, notwithstanding that resistance, a court directs mediator to testify or produce, the compelling party shall be liable for and shall indemnify mediator for time and expenses (including attorney fees) in accordance with paragraph 8, below.

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6. I understand that I cannot attend any mediation conference with a weapon in my possession.
7. I understand that any information received by a mediator or a person employed to assist a mediator is privileged and confidential. However, a mediator must disclose information brought to his/her attention that an elderly person, or a person with disabilities, or a child under the age of eighteen (18) has been physically abused or neglected.
8. I have the right to suspend or terminate the mediation process at any time and that the mediator shall terminate the process, if in the mediator's judgment, one of the parties is not able or willing to participate in good faith.
9. The fees for the mediation shall be as follows:
  - a. **\$360.00** per two (2) hour session to be split between the parties (\$180.00 per party) for mediation services rendered by the mediator pursuant to this Agreement. The only forms of payment that are accepted are: credit card and debit card. Personal checks will not be accepted.
  - b. A two-hour minimum for any day on which mediation is scheduled to occur, unless another minimum is otherwise agreed upon in advance.
  - c. Unless litigating parties arrange otherwise, litigating parties are jointly and severally responsible for mediator's fees and expenses. In his/her judgment the mediator may require, and litigating parties shall make, advance payments against fees and expenses. Mediator will refund such amounts not earned, but will only guarantee to do so provided that the litigating parties cancel at least three days prior to their scheduled mediation by written notice.
  - d. There may be a \$300.00 fee incurred if the parties cancel the scheduled mediation less than two (2) days prior to the scheduled mediation date.
10. If an agreement is written and signed to end this dispute, all parties will receive a copy.
11. I have read and understand this agreement. In return for the opportunity to settle this dispute through mediation, I agree to abide by all the terms of this Agreement.

I hereby release from liability Matthew P. Gomez for any claimed damages arising out of any action, statement, or decision made or taken in the meditation session, except where provided for in the Dispute Resolution Act.

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## **CONFIDENTIALITY AGREEMENT**

In order to promote communication among the parties and the mediator and to facilitate settlement of the dispute, all parties agree that the mediator has no liability for any act or omission in connection with the mediation, and further agree as follows:

1. The mediator is a neutral intermediary who may not act as an advocate for any party. During the course of the mediation proceedings, disclosures made by or for any party privately in caucus to the mediator shall not be disclosed by the mediator to any other party without the consent of the disclosing party.
2. All statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any party's legal position and without waiving any rights, and will be non-discoverable and inadmissible for any purpose in any legal proceeding absent the prior written consent of both the parties and the mediator.
3. The privileged character of any information is not altered by disclosure to the mediator. Disclosure of any records, reports, including presentations made by third-parties, or other documents received or prepared by the mediator cannot be compelled. The mediator shall not be compelled to disclose or testify in any proceeding as to:
  - a. Any records, reports, or other documents received or prepared by the mediator; or
  - b. Information disclosed or representations made in the course of the mediation or otherwise communicated to the mediator in confidence.
4. No aspect of the mediation shall be relied upon or introduced as evidence in any arbitral, judicial, or other proceeding, including but not limited to:
  - a. Views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
  - b. Admissions made in the course of the mediation proceedings; and
  - c. Proposals made or views expressed by the mediator or the response of any party.

Since the parties are disclosing potential sensitive information in reliance upon this agreement of confidentiality, any breach of this agreement would cause irreparable injury for which monetary damages would be

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inadequate. Consequently, any party to this agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this agreement.

Any party breaching this agreement shall be liable for and shall indemnify the non-breaching parties and mediator for all costs, expenses, liabilities, and fees, including attorneys' fees, which may be incurred as a result of such breach.

We, the undersigned, acknowledge that we have read and understand this Agreement to Mediate/Fee Agreement and Confidentiality Agreement, and hereby agree to abide by its terms.

\_\_\_\_\_  
*Petitioner*

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Respondent*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Matthew P. Gomez, Mediator

\_\_\_\_\_  
Date