

# Beaufort/Jasper Community Conflict Resolution Center

2015 Boundary Street  
Beaufort, South Carolina 29902  
BJCCRC.org

## AGREEMENT TO MEDIATE

This is an agreement between Beaufort/Jasper Community Conflict Resolution Center (hereafter known as Mediator) and \_\_\_\_\_, and \_\_\_\_\_, (identified herein as a “party” or as the “parties”). This Agreement to Mediate is signed by the parties and the Mediator to create and clarify the mediation relationship. The parties desire to mediate all issues that otherwise might be involved in contested litigation. The parties herein agree to abide by the provisions of this Agreement to Mediate. This agreement reflects each party’s sincere intention to be open and equitable during mediation. All parties must sign this agreement prior to the commencement of mediation with Mediator.

### 1. NATURE OF MEDIATION

The parties agree that mediation is an agreement-reaching process in which the Mediator assists parties to reach agreement in a collaborative, consensual, and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties agree that the Mediator’s objective is to facilitate the parties themselves reaching their most constructive agreement. The Mediator at times may offer suggestions to the parties in order to keep the discussions moving, but it is up to the parties whether to acknowledge or dismiss the Mediator’s suggestions.

### 2. ROLE OF THE MEDIATOR

The parties agree that the Mediator is an impartial facilitator and is NOT an attorney for either of the parties. Although the Mediator may ask questions or express concerns about the parties’ agreement, the Mediator will respect the parties’ concepts of fairness and has no responsibility for the fairness or legality of the resolution. The parties further understand that the Mediator is not serving as an accountant, a child psychologist, advocate, therapist, or any other substantive expert, and the parties will not rely on the mediator for advice about taxes, child development, or other subjects for which they may seek professional expertise. Parties are encouraged to seek the professional consultations that may be appropriate in their particular circumstances. The Mediator shall act as a neutral facilitator and does not impose his views of what the final agreement should be. The parties acknowledge that the mediator will be impartial, he does not favor either party, there may be issues in which one party may be reasonable and

the other may not be reasonable. The Mediator has a duty to assure a balanced dialogue and to diffuse any manipulative or intimidating tactics.

### 3. TERMINATION OF MEDIATION AND RIGHT TO WITHDRAW

The mediation process is voluntary and non-binding. Any party may withdraw at any time, without cause and without reason to the other party or the mediator. A decision to terminate mediation must be in writing. If the mediation is court-ordered, permission from the court may be required and any sanctions imposed by the court are paid by the parties and/or their attorneys. Mediation may not resume following said notification, unless expressly authorized in writing by all parties. The Mediator will attempt to help the parties resolve any outstanding disputes as long as both parties make good-faith effort to reach agreement based on their idea of fairness to both parties. Parties must be willing and able to participate in the process. The mediated agreement requires compromise, and parties agree to be flexible and open to new possibilities for a resolution of the dispute. If the Mediator in his professional judgment concludes that agreement is not possible or that continuation of the mediation process would harm or prejudice one or all of the parties, the Mediator shall withdraw and the mediation conclude. Upon termination of mediation for any reason, the Mediator agrees not to counsel either party or represent any party against any other party in any court proceedings, adversary negotiation, or for any reason involving a dispute between the parties.

### 4. CONDUCT DURING MEDIATION SESSIONS

The mediation process may be conducted in a manner that the Mediator believes will most expeditiously permit full discussion and resolution of the issues. Therefore, the use of threats, intimidation, or other actions by the parties in a disruptive manner will not be tolerated and the mediation will recess during that session until the disruptive party can better control their emotional outbursts.

### 5. CONSULTATION WITH ATTORNEYS

Legal advice and legal representation is not part of mediation and will not be provided by the Mediator. Legal advice is not given in mediation sessions and the parties agree that legal issues created by their decisions reached in mediation will be referred to their attorneys if so desired. Parties are not discouraged from obtaining legal counsel. Although the Mediator recommends that each party educate themselves about the legal approach to marriage dissolutions, the Mediator does encourage the parties to discuss and negotiate a settlement based in their own standards of fairness and their own choices about what is best for themselves and their family. Mediator maintains a panel of attorneys who specialize in family law and are familiar with the divorce-mediation process. This list is available to clients upon request. Each party is

encouraged to choose and interview an independent counsel who will respect the work they have completed in mediation and who will provide them with an independent judgment of their decisions.

## 6. CONCURRENT LEGAL PROCEDURES

Unless specific exceptions have been agreed to by all parties and the Mediator, while parties are in mediation, the parties will take responsibility for ensuring that all legal processes including filing motions, petitions, discovery, or other legal pleadings are suspended until all parties have agreed or have been given written notice that mediation is terminated either through complete settlement, impasse, or withdrawal from mediation.

## 7. VOLUNTARY DISCLOSURE

The parties agree that while mediation is in progress, full disclosure of all information is essential to a successful resolution of the issues. Since the court process may not be used to compel information, (unless in court-appointed cases), any agreement made through mediation may be rescinded in whole or in part if one party fails to disclose relevant information during the mediation process. Likewise, at the conclusion of mediation, the parties agree that they will sign a notarized statement declaring that they have fully and truthfully disclosed all information concerning assets, liabilities, and income if so requested by the Mediator or the other party.

## 8. CONFIDENTIALITY OF MEDIATION SESSIONS

It is agreed by the parties and the Mediator that the mediation will be strictly confidential. Mediation discussions, written or oral communications, draft resolutions, Memorandums of agreements, and unsigned mediated agreements shall not be admissible in any court proceedings. Only the final mediated agreement drafted by the attorney(s), signed by both parties may be admissible. The parties agree not to call or subpoena the Mediator to testify concerning the mediation or to provide materials from the mediation in any court proceeding between the parties. The parties will also not subpoena any neutral experts such as accountants, appraisers, or others, for information acquired during the mediation process.

### Limitations on Confidentiality

1. Child abuse: Although mediators may or not be mandated in certain jurisdictions to report child abuse allegations, the mediator may encourage self-reporting of any such allegations disclosed during the mediation process, and in circumstances in which the mediator believes the safety of a child to be in question, the Mediator may report such information to the local Child Protective Agency.

2. Physical Safety: If the Mediator reasonably believes anyone's physical safety is at risk, such as if one party were to make threats of physical harm or other inappropriate circumstances, the mediator may alert public authorities such as the police.

#### 9. PROHIBITION AGAINST ACTIONS THAT CHANGE THE MARITAL ESTATE

Upon commencement of mediation, the parties will not engage in any transactions that materially affect the status quo of the existing marital estate. Parties agree that transfers or sale of property, initiating liens and/or other encumbrances against real or personal property, without the written agreement of both parties and their attorneys is prohibited, except in the usual course of meeting ordinary monthly obligations. Likewise, parties agree not to cancel or change health insurance, life insurance, or other benefits while in mediation. It is also agreed not to close credit or bank accounts, limit-out credit cards, transfer funds or titles to vehicles, or change the status of pension, profit sharing, 401K's or other investment instruments of any kind or other jointly owned property while mediations are in progress.

#### 10. COURT REFERRALS

In the event Parties have been ordered to mediation by a Court Order, there may be other requirements contained in the Court Order that parties are expected to follow. Special Orders for Protection and other requirements may be in force and will be discussed at the initial consultation. Any other special rules created and adopted by the parties will be contained in the Memorandum of Agreement prepared by the Mediator. Mediated cases court-ordered will be under the rules set forth by the court.

#### 11. PARTICIPATION OF CHILDREN AND/OR PERSONS OTHER THAN THE PARTIES

Children of sufficient age and other persons having direct interest in the mediation may participate in mediation sessions related to their issues with consent of the parties and the Mediator. Participation by the parties respective attorneys relating to the mediation have to be with either both parties attorneys' present during the mediation. The attorneys may advise their clients during the mediation session. Respective fees charged by the parties' attorneys are to be paid by the respective parties and not part of the Mediator fees.

#### 12. HIRING AND PAYMENT OF OUTSIDE INDEPENDENT EXPERTS

Parties may hire and/or consult with outside experts (tax and financial experts, real estate and business appraisers, or other experts related to their settlement agreement). Parties agree to pay these outside experts as a separate part from the mediation fees. A Roster of neutral outside experts that are familiar with the mediation process are available from the Mediator.

### 13. SCHEDULING OF SESSIONS AND STARTING TIMES

Sessions are set up in one and a half (1-1/2) hour appointments. If a party needs to change a scheduled appointment, they are requested to do so at least 24 hours in advance. Failure to do this will result in a charge of \$50.00 for the canceled session. Emergencies will be excused at the discretion of the Mediator. In-session mediation time will commence with the time that the session is scheduled to begin, unless the delay in starting time is attributed to the mediator. Court-ordered mediation sessions shall follow cancellation rules and fees set forth by the court.

### 14. FEES

All mediation appointments are scheduled for one and a half (1-1/2) hour sessions, with a minimum session time being one (1) hour. Parties agree to compensate Beaufort/Jasper Community Conflict Resolution Center at a rate of \$\_\_\_\_.00 per hour for mediation services. Party 1 will pay \$ \_\_\_ of the mediation fee and Party 2 will pay \$\_\_\_ of the mediation fee. Beaufort/Jasper Community Conflict Resolution Center charges a one- time start-up fee of \$\_\_\_\_.00 to cover administration costs. This administration cost is to be paid at the signing of this contract. Hourly fees are due at the end of each session and can be paid in cash, check, Visa, or MasterCard. The final product of your mediation is a Memorandum of Agreement. This Agreement is then drafted by an attorney of the parties choosing for final execution with the court. In order for Beaufort/Jasper Community Conflict Resolution Center to provide you with this final agreement, all charges must be paid in full. Any disputes of fees owed to Beaufort/Jasper Community Conflict Resolution Center are to be settled through Arbitration and not through court litigation. If fees are not paid current, mediator will recess mediation until fees are current.

### 15. PREPERATION OF BUDGETS, ASSETS, and LIABILITIES LISTS

The preparation of budgets, assets and liability lists by each party is an essential part of the mediation process. If either party fails or refuses to prepare a budget, asset and liability lists adequately reflecting his or her needs, assets and liabilities, the Mediator shall have the option of recessing mediation until this issue is resolved or, at his discretion, may declare an impasse.

### 16. DRAFTING AN AGREEMENT AND FILING OF COURT DOCUMENTS

No decisions reached in mediation become final and binding until they are approved by the parties and implemented through a court order. At the conclusion of the mediation sessions, the Mediator will draft a detailed memorandum setting forth the decisions agreed upon by the parties in mediation. The Memorandum of Agreement will contain background information about the parties and will set forth the factual information relied upon by the parties reaching settlement. The Memorandum of Agreement will

be submitted to each of the parties' attorneys' for review. The parties agree that the mediator cannot represent the parties in a court of law. However, the parties agree that if the parties are represented by counsel, or act as their own attorney (pro-se), the parties may authorize Beaufort/Jasper Community Conflict Resolution Center to contract with an independent counsel law firm to neutrally prepare court papers and to monitor all paperwork through the court system. In performing such work, Beaufort/Jasper Community Conflict Resolution Center is performing its neutral mediator function and will take no action without the mutual agreement and authorization of all parties. Parties agree that if they wish to have Beaufort/Jasper Community Conflict Resolution Center hire such independent counsel law firm, the cost incurred by the independent law firm is to be paid by the Parties.

17. RELEASE TO TALK TO THE PARTIES ATTORNEYS

By their initials here, the parties authorize the mediator to discuss issues related to the mediation with the parties separate attorneys, at the Mediator's discretion. \_\_\_\_\_ and \_\_\_\_\_

I have read the attached Mediation Agreement completely and understand its contents. Parties agree to abide by the provisions herein. I have initialed each page to indicate my understanding and agreement of the terms.

This is an agreement between;

\_\_\_\_\_

Hereinafter "parties" and

Beaufort/Jasper Community Conflict Resolution Center

Hereinafter "Mediator" to enter into mediation with the intent of resolving issues related to:

\_\_\_\_\_

\_\_\_\_\_

Dated \_\_/\_\_/\_\_\_\_ Mediator \_\_\_\_\_

Dated \_\_/\_\_/\_\_\_\_ Party #1 \_\_\_\_\_

Dated \_\_/\_\_/\_\_\_\_ Party #2 \_\_\_\_\_