

AGREEMENT TO MEDIATE

_____ and _____,

("the Parties") agree to participate in mediation with Rebecca M. Picard ("the Mediator")

to address the following:

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The Parties and their representatives will abide by the following:

1. **Role of the Mediator.** The Mediator is an impartial facilitator and is not a decision-maker, attorney, counselor or expert for either or both parties.
2. **Participation.** The Parties are responsible for seeing to it that individuals with authority to make decisions and to settle the above-referenced matter are present at all mediation sessions. If mediation is held pursuant to a court order, the trial attorneys may be required to attend scheduled conferences.
3. **Good Faith.** The Parties will make a sincere attempt to reach further clarity about the issues in dispute, understanding that they are not required to reach agreement.
4. **Disclosure.** The Parties and their attorneys may refuse to divulge information, but will not give false information.
5. **Confidentiality.** To the extent that confidentiality is enforceable by law, all communications, documents and notes made in or for mediation are confidential. The Parties and their representatives will not:
 - a. subpoena the Mediator, the Mediator's staff or members of any agency which may have referred the case to mediation; or any records or documents of those persons or entities in any legal proceedings of any kind. If called or subpoenaed to testify or produce documents, the Mediator may refuse to do so. Should any party attempt to compel such testimony or production, that party shall be liable for, and shall indemnify the Mediator and the referring agency against, any liabilities, costs or expenses, including reasonable

attorney's fees, incurred in resisting the compulsion to testify or produce documents.

- b. attempt to discover or use as evidence in any proceeding any communication made in or related to the mediation process or any documents, including meeting notes, developed in or as a result of the mediation process. This is not intended to preclude the use of financial or other discoverable documents not prepared specifically for the mediation process.

The Mediator will not disclose her notes, records and recollections to any person except her administrative staff in any fashion in which the parties could be identified, unless required by law or applicable professional codes.

- 6. **Limits on Confidentiality.** Minnesota Statute §626.556 requires professionals providing social services, which may or may not include mediators, to report child abuse in the form of neglect, physical abuse or sexual abuse. Information shared with the Mediator about such abuse may be reported to appropriate governmental authorities. Threats of imminent bodily harm to anyone, whether or not the threatened person is a participant in mediation, may be reported to the police.
- 7. **Disclosures Required by the Minnesota Civil Mediation Act; Minn. Stat. § 572.35.** The Parties are hereby advised that (a) the Mediator has no duty to protect the Parties' interest or to provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect the Parties' legal rights; and (c) the Parties should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights. In addition, if the Parties reach an agreement that they intend to be binding, the writing memorializing their agreement should state that it is binding.
- 8. **Fees.** The Parties agree to pay the Mediator's fees at the session or within 10 days of billing. A retainer may be required. If a retainer is paid before the commencement of mediation, any unearned portion of the retainer will be refunded at the conclusion of the mediator's work on the case. The rate for the Mediator's time is \$_____ per hour for time devoted to the Parties' case both during mediation conferences and in preparation, telephone conversations with Parties and/or their attorneys, and other functions such as drafting a memorandum of understanding, if specifically requested by the parties. (The Mediator will not draft legal settlement documents intended to be filed in court.)
- 9. **Cancellation Policy.** Failure to notify the Mediator of a cancellation at least one business day and a minimum of 24 hours prior to a scheduled session shall result in a charge of two hours' time.

10. **Conflicts of Interest; Waiver.** The parties, their representatives and the Mediator have discussed the following relationship(s) which may give rise to a conflict of interest: _____

_____.

After having the opportunity to discuss the possible conflict with counsel, by signing this Agreement to Mediate, the Parties waive the potential conflict of interest as they do not expect it to interfere with the Mediator's impartiality.

11. **Caucuses.** If it would facilitate the process, the Mediator or the Parties or either of them, may request a caucus with the Mediator. If the Mediator caucuses with one Party, she will offer the other Party the opportunity to caucus as well. The Parties understand that the duration of those caucuses may vary. The Parties and the Mediator agree on the following groundrules for caucuses:

_____.

12. **Termination of Mediation.** Either Party or the Mediator may terminate a particular mediation session or the entire mediation process at any time. However, the Parties each agree to make reasonable and appropriate attempts to address in mediation the issues leading the Party to desire termination.

13. **Mediator Qualifications.** The Parties acknowledge that they have been provided with a statement of the mediator's qualifications.

14. **Release to Talk to the Parties' Attorneys.** By their initials here, the Parties authorize the mediator to discuss issues related to the mediation with their attorneys. _____

Dated : _____

Party

Party

Representative

Representative

Rebecca M. Picard, Mediator