

Paul W. Hughes  
Mediation First, LLC  
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## MEDIATION AGREEMENT

The parties, \_\_\_\_\_ and \_\_\_\_\_, hereby enter into an Agreement to Mediate with Paul W. Hughes and appoint Paul W. Hughes as their mediator. This Agreement shall act as a binding contract between the mediator and the parties, the provisions of which are as follows:

1. **Mediation is voluntary.** The parties are not required to reach agreement on all, or even any, issues in dispute. If no agreement is reached through mediation, the parties are free to pursue other avenues of dispute resolution.
2. **The mediator as a neutral.** The parties understand that mediation is a process of alternative dispute resolution. The parties acknowledge that the mediator is a neutral facilitator who will not make decisions but who will assist the parties in reaching their own settlement. The parties agree to enter into mediation in good faith, with the intention of reaching an amicable settlement of their disputes, if possible.
3. **Respectful communication.** Mediation is most effective if the parties set aside fault and blame. Each party accepts responsibility for stating his/her wants and needs, yet respects the other's right to be heard. If the mediator determines that the parties are not attempting to negotiate in a constructive manner, he may terminate the mediation session, and the parties shall pay for the entire scheduled time.
4. **Release of information.** The parties agree, upon their prior consent, to the mediator's consulting with appropriate experts such as financial consultants, neutral attorneys, real estate professionals, engineers, or any other collateral sources whose information would be helpful to the situation, within or outside of the mediation session. This Agreement constitutes a Release of Information for Paul W. Hughes and any experts.
5. **Full Disclosure of information.** The parties understand that the full disclosure of all relevant and pertinent information is essential to the

mediation process. The parties agree to disclose to each other and the mediator -- completely, honestly and respectfully – all relevant information and documents that would usually be available through the discovery process in a legal proceeding. This Mediation Agreement does not prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of mediation.

6. **Caucusing.** There may be times when the mediator believes that a “caucus” – or separate meeting with a party – would facilitate the process. The caucus is the only time during the mediation process that information brought forward by one party would not be shared with anyone other than the mediator, except with the disclosing party’s prior consent. However, the mediator may terminate the mediation if he believes that sharing of the information is essential for the mediation to continue.
7. **Confidential process.** The parties agree not to subpoena or demand the production of any of the mediator’s records, notes, work product or the like in any legal or administrative proceeding concerning this dispute. To the extent that the parties may have a right to demand these documents, that right is hereby waived. Copies of all correspondence with the mediator shall be available to the opposing party if requested. Although each party is free to take notes, these notes and the notes of the mediator are confidential. These notes, and any other written materials related to mediation, may not be used as exhibits for purposes of litigation. The parties hereby grant the mediator privilege, meaning that the mediator may not be called by either party, or by anyone acting on behalf of the parties, to any legal proceeding to testify about the content or outcome of mediation, or about the mediator’s observations or opinions about the parties or their points of view. Should the mediator be subpoenaed by either party and seek to quash the subpoena, that party agrees to pay the hourly rate of the mediator at that time and any costs, legal or otherwise, incurred in such a process.
8. **Mandatory reporting.** It is understood that the mediator is not required to maintain confidentiality, under Colorado law, if he has reason to believe that there is intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of 18 years.
9. **Mediation is not legal advice, financial advice, or psychotherapy.** The mediator shall not offer legal advice or provide legal counsel; the mediator is not an attorney. Any documents prepared by the mediator are to be ancillary to the mediation process and are not intended to constitute legal advice. The mediator is not obligated to identify or resolve legal issues. The parties’ settlement may be waiving or compromising legal rights.

Consequently, it is the responsibility of the parties to obtain legal advice from their respective attorneys. This Agreement serves to advise each of the parties to retain their separate attorney in order to be properly counseled regarding individual legal interests, rights and obligations. The mediator is not a licensed psychotherapist, and the parties understand that this mediation process is not psychotherapy. The mediator does not offer financial advice. The parties are responsible for having their own financial advisor, accountant or tax advisor review any financial ramifications of any agreement reached through mediation.

**10. Fees.** Charges for mediation shall be as follows:

- Face-to-face mediation is charged at \$150 per hour, payable at the time of mediation. The minimum session time is two (2) hours. It may be appropriate for the mediator to meet or speak with each party separately; in this case, the parties are each solely responsible for the costs of the private sessions, unless otherwise agreed. This does not apply to brief caucuses during mediation.
- Telephone mediation is charged at \$100 per hour and may be prorated at \$25 per 15-minute period. This includes any and all telephone calls from the parties to the mediator except in the instance of arranging for mediation or scheduling mediation sessions.
- There is a charge of \$150 for each session canceled by a party or parties less than 24 hours in advance or not attended. If one party fails to appear for a scheduled session, or fails to give 24 hours notification, that party shall be responsible for the entire fee for that session.
- The mediator charges \$50 per hour for reasonable professional services rendered outside the sessions such as telephone calls, reviewing documents, mailing, correspondence, research, consultation, deliberation, drafting memoranda of understanding, travel, and copying of documents. The parties will receive a statement of such services when they are performed.
- If a check is returned or payment is stopped, there will be a \$50 charge added to the amount due
- In the unlikely event that a balance is due and has not been paid within 15 days of the statement date, that party will be charged 1.5% of the unpaid balance per month, plus all costs and expenses, including reasonable attorneys fees and collection costs. Further mediation services will be postponed until the amount owed has been paid in full.

**11. Cooperation.** The parties each agree to make a good faith effort to be available for mediation conferences when requested by the other party or the mediator.

12. **Terminating mediation.** While the parties intend to continue to mediate until a settlement is reached, the parties understand that either or both may withdraw from mediation at any time. If the mediator determines that it is not possible to resolve the issues through mediation, the process can be terminated once this determination has been conveyed to the parties and confirmed in writing.
13. **Memorandum of Understanding.** When an agreement is reached, the mediator may, at the election of the parties, draft a Memorandum of Understanding. The parties are advised to review this draft with their respective attorneys before the Agreement is placed in final form and signed.
14. **Changing guidelines.** This contract cannot cover all of the particulars that may arise in every mediation, and the parties agree that the mediator may need to establish new rules and guidelines to fit the unique circumstances of the parties.
15. **Release of liability.** The parties enter into this Agreement with the full understanding that they will not hold the mediator liable for the outcome of the mediation, as this is entirely the responsibility of the parties.
16. **Attorney consultation.** The mediator strongly encourages the parties to consult with their attorneys before, during and after the mediation process. The parties have read this Agreement and have had the opportunity to discuss it with their attorney if they so desire.
17. **Mediator's Disclosure.** The parties acknowledge by their signatures to this document that they are aware that mediator's spouse, Shelley Hill, is a District Court Judge for the 14<sup>th</sup> Judicial District. If the issues being mediated are currently in litigation or end in litigation, it is possible that the case has been or may be assigned to mediator's spouse to preside over. Because of the confidentiality of mediation, mediator never discusses mediation sessions with his spouse. The parties hereby waive any conflict or appearance of conflict because of this situation.

**I have read, understood and agree to each of the provisions of this Agreement.**

Signed \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Phone(s) \_\_\_\_\_ Email \_\_\_\_\_