



COMMON GROUND RESOLUTIONS

AGREEMENT TO MEDIATE

MATTER/CASE NAME:

Date of Mediation:

Location of Mediation:

Mediation Start Time:

This is an Agreement between the undersigned parties and/or legal counsel (hereinafter sometimes collectively referred to as the “Participants”), and Hon. David R. Lampe (Ret.) (“Mediator”) to enter into mediation at the time and place above with the intent of resolving all issues regarding the matter identified above. The Participants and the Mediator may also collectively be referred to herein as the Parties. The Parties understand and agree as follows:

1. Nature of Mediation

The Participants hereby appoint and retain the Mediator as mediator for their settlement negotiations. The Participants understand that Mediator is an attorney, but will in this mediation not serve as any Participant’s nor all Participants’ legal counsel. The Participants understand that mediation is an agreement-reaching process in which the Mediator will assist the Participants 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 Participants. The Participants understand that mediation is not a substitute for independent legal advice. Any Participants not represented by counsel are encouraged to secure such advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated agreement before signing that agreement. The Mediator may require any unrepresented Participants to have their agreement reviewed by legal counsel to ensure that Participant is reaching a reasonably informed agreement. The Participants understand that the Mediator’s objective is to facilitate the Participants themselves reaching their best agreement. The Participants also understand that the Mediator has an obligation to work on behalf of all Participants and that the Mediator cannot render individual legal advice to any Participant and will not render therapy nor arbitrate within the mediation. The Participants agree that their sole purpose in conducting or participating in mediation is to compromise, settle, or resolve their dispute, in whole or in part. All Participants recognize that the mediator is not acting as a judge and has no authority to force a settlement on the Participants. All participants commit to use their best efforts to resolve this matter.

2. Scope of Mediation

The Participants understand that it is for the Participants, with the Mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process. In the event that any Participant is online, or in the event that the mediation session is entirely online, the Participants agree to abide by the Mediator's online guidelines incorporated herein by reference.

3. Mediation is Voluntary

All Participants herein state their good faith intention to complete their mediation by an ultimate agreement. It is, however, understood that any Participant may withdraw from or suspend the mediation process at any time, for any reason or no reason.

The Participants also understand that the Mediator may suspend or terminate the mediation, if the Mediator feels that the mediation will lead to an unreasonable result, if the Mediator feels that an impasse has been reached, or if the Mediator determines that he or she can no longer effectively perform his or her facilitative role.

Each Participant agrees to ensure that a person with ultimate authority to settle the case is present for the mediation, or, if not able to be physically present, is available by telephone at all times during the mediation. In the event that any settlement must be approved by a governing board, the person with authority to recommend the settlement to that governing board shall be present or available at all times.

4. Confidentiality

It is understood between the Participants and the Mediator that the mediation will be strictly confidential. Mediation discussions, any draft resolutions and any unsigned mediated agreements shall not be admissible in any court, administrative or other contested proceeding. Only a mediated agreement signed by the Participants may be so admissible. The Participants further agree to not call the Mediator to testify concerning the mediation nor to provide any materials from the mediation in any court or other contested proceeding between the Participants. The mediation is considered by the Participants and the Mediator as settlement negotiations. All Participants also understand and agree that the Mediator may have private caucus meetings and discussions with any individual Participant, in which case all such meetings and discussions shall be confidential between the Mediator and the caucusing Participants, unless the Participants agree otherwise.

The mediation process is to be considered a settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. The Parties hereby incorporate herein by this reference and agree that the provisions of California Evidence Code §§703.5 and 1115-1128, 1152, 1154 and 1155 shall apply to any mediation conducted hereunder, and to anything communicated, exchanged, said, done or occurring in the course of the mediation, whether oral or written, including any private caucus or discussions between the mediator and any party or counsel before or after any joint mediation session.

The privileged character of any information or documents is not altered by disclosure to the mediator. The mediation process may continue after the date appearing below. Therefore, the mediator's subsequent oral and written communications with the mediation Participants in a continuing effort to resolve the dispute are subject to this agreement. This agreement may be signed before, during or after the mediation.

Because the participants are disclosing information in reliance upon this agreement of confidentiality, any breach of this agreement would cause irreparable injury for which monetary damages would be inadequate. Consequently, any party to this agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this agreement.

The Participants agree that notwithstanding the provisions of California Evidence Code section 1125, all oral and written communications, at any time, between the Mediator and any Participant(s) in an effort to resolve the dispute are subject to this agreement.

5. Mediator Impartiality and Neutrality

The Participants understand that the Mediator must remain impartial throughout and after the mediation process. Thus, the Mediator will not champion the interests of any Participant over another in the mediation nor in any court or other proceeding. The Mediator is to be impartial as to Participant and neutral as to the results of the mediation. The Mediator will seek to affirmatively reveal any operative biases and will disclose any and all prior contacts with the Participants and their legal counsel.

6. Mediation Fees

The Participants and the Mediator agree that the Mediation Fee for the Mediator shall be \$[dollar amount] for a [full day or eight hour/half day or four hour/ number of hours] [The Mediation Session between the Participants and Mediator shall be at the Mediator's regular business facilities. /This mediation is to be conducted away from the Mediator's regular business facilities. In addition to the Mediation Fee above, the Mediator will be compensated at a rate of \$[dollar amount] per hour for travel, and will be reimbursed all reasonable and necessary travel costs.] The Mediator's time before the mediation session required to study documents, research issues, correspond, telephone call, and do such other things as may be reasonably necessary to facilitate the mediation session are included. Time spent to facilitate or prepare draft and final agreements are to be accomplished during the mediation session, or an agreed extension of the mediation session. The Mediator shall also be reimbursed for all extraordinary expenses incurred as a part of the mediation process.

The full amount of the Mediation Fee shall be paid to the Mediator at the time of the signing of this Agreement, or immediately thereafter. The Participants understand that this payment is a true retainer to secure the mediation date and the Mediator's availability and participation. The Mediator does not schedule any other matters in conflict with this mediation session. The Mediation Fee is earned by the Mediator when paid, subject to the refund provisions of this agreement. The Mediation Fee is not held in trust. Counsel shall be considered a Participant, and shall be responsible for their share of the Mediation Fee. Counsel is presumed to have obtained client authority to execute this Agreement on behalf of their client or clients.

The Mediation Fee will be paid [equally (per stripes) by each side of Participants/as follows:]

The Mediation Fee may be refunded in the following manner. If the full Mediation Fee has not been paid within 10 days of the date of this Agreement, or by 30 days before the Mediation Session, whichever occurs first, the Mediation may be cancelled by the Mediator or any Participant who has paid their share. In that event, any Participant who has paid their share shall be entitled to a full refund, less their share of an administrative fee of \$500.00. If a matter is cancelled by the Participants after payment of the full Mediation Fee at least 30 days prior to scheduled services, a full refund is available, less a \$500 admin-

istrative fee (unless a new date is agreed upon). For cancellation within 29 to 15 days before scheduled services, a 75% refund is available, less a \$500 administrative fee. For cancellation within 14 to seven days before scheduled services, a 50% refund is available, less a \$500 administrative fee. No refund is provided (except in the discretion of the Mediator) if a cancellation occurs within seven days of scheduled services.

In the event that the Mediation Session successfully concludes or terminates for lack of success within or before the allotted time, the Mediation Fee is nevertheless fully earned by the Mediator.

In the event that the Mediation Session does not conclude within the time allotted on the same day, but success remains possible, in the discretion of the Mediator, the Mediation Session may continue during the same day upon the agreement of the Participants to pay the fee of *[\$dollar amount]* per hour to the Mediator to be billed after the Mediation Session and paid in the same proportion by the Participants as the Mediation Fee.

In the event that the Participants and Mediator agree that it would be beneficial to recess and reconvene the Mediation Session to another day before the allotted time has expired, in the discretion of the Mediator, the Mediation Session may be continued to another available date for the remaining time allotted for the Mediation Session without further fee.

7. Miscellaneous

The Participants agree to release the Mediator from any and all claims arising out of their failure to reach agreement or their decision to enter into any agreement or any other aspect of the mediation process. Further, the Mediator makes no representation that the participants will reach an agreement on any of the issues, disputes or controversies discussed in the mediation. Any party who brings any claim, action or proceeding of any nature against the Mediator or who seeks to have the Mediator testify shall be responsible to indemnify the Mediator for any expenses, loss or damage incurred, including, without limitation, attorneys' fees and expenses incurred in connection with such claim, action or proceeding brought by such participant. In the event that the Mediator is required to institute an action, claim or undertake collection proceedings to collect the Mediator's fees, the parties and their attorneys are jointly and severally responsible for attorneys' fees, costs and costs of collection incurred by the Mediator.

This agreement contains the entire understanding between the Participants and supersedes all previous agreements, understandings and communications between the Participants regarding the Mediator's services, whether oral, electronic or in writing. This agreement applies to and binds the Participants' heirs, executors, administrators, successors and assigns. This agreement cannot be modified except by a writing signed by both Participants. This agreement will be governed by and construed in accordance with the laws of the State of California without regard to principles of conflict of laws, and any action, claim or proceeding hereunder shall be commenced exclusively in the courts of the State of California located in Kern County.

DATED:

[Name of Participant 1]

By:

[Name of authorized representative of Participant 1]

[Title of authorized representative of Participant 1]

[Name of Participant 2]

By:

[Name of authorized representative of Participant 2]

[Title of authorized representative of Participant 2]

[Name of mediator]