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Agreement to Mediate

The parties to this Agreement wish to work toward a settlement of the above-referenced claim through the process of mediation conducted by Judge Gil Jones ("Mediator"). The parties to this Agreement hereby agree to the following, and further that this Agreement is made also for the benefit of the Mediator who is entitled to rely on it:

1. **BINDING PROCESS.** Participation in the mediation process is voluntary (or participation is court-ordered), however the parties expressly understand and agree that any agreements reached as a result of mediation will be binding and should be reviewed by their attorneys before finalization.
2. **MEDIATION FEES.** The parties understand that MEDIATOR charges for mediator services provided in this case. The fee is a combination of a flat fee for a ½ day or full day of mediation that includes a maximum amount of administration and preparation time, plus a possible hourly rate for extra preparation, overtime sessions and post-mediation time. All mediation fees will be pre-collected or billed to the appropriate attorneys of record or insurance companies, in accordance with the terms of the MEDIATOR fee schedule. Attorneys are responsible for mediation fees generated on behalf of their clients. A separate schedule of mediation fees including the rescheduling and cancellation policy is attached and is a part of this Agreement.
3. **APPOINTMENT OF MEDIATOR.** The parties have agreed to the selection of Judge Guilford "Gil" Jones to serve as mediator in this dispute, or understand that he has been appointed by the Court if that is the case. The parties understand that the mediator is an independent contractor and is not serving as the attorney for either side. The mediator may not have any financial or personal interest in the outcome of the mediation and must disclose any circumstances which create a presumption of bias or cause a delay in the mediation process.
4. **ATTENDANCE AT MEDIATION:** The Parties agree that the Party personally shall attend mediation, or if the party is an entity or insurance carrier, it will have a designated representative with authority to negotiate in good faith and settle the matter in attendance. Anyone other than a Party or a party's designated representative and their respective counsel may not attend mediation without the Mediator's consent. Such consent must be secured prior to the day of mediation. The Mediator has the discretion to exclude any non-party or non-representative from attendance at mediation.
5. **CONFIDENTIALITY.** The parties recognize that mediation proceedings are settlement negotiations, and that all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings, are inadmissible in any mediation or court proceeding except to the extent allowed by applicable state law. The parties agree to not subpoena or otherwise require the mediator to testify or produce records, notes or work product in any future proceedings, and no audio recording or stenographic record will be made of the mediation session. Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation session. In the event the parties do reach a settlement agreement, the terms of that settlement will be admissible in any court or mediation proceedings required to enforce it unless the parties agree otherwise. Information disclosed to the mediator in a private caucus shall remain confidential unless the party authorizes

disclosure. . **However**, (applicable if a child is involved) *if the mediator has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person, the mediator is obligated by law to report it to the appropriate authorities and that those specific issues are not covered by the confidentiality of a mediation session.*

6. **MEDIATOR MAY MEET PRIVATELY WITH PARTIES:** The Mediator may meet privately with any of the parties, their counsel, or any combination thereof, and have such ex parte communications with any of the foregoing, before, during, or after the mediation, as the Mediator deems necessary and appropriate and within the scope and purpose of mediation and attempted settlement. The parties acknowledge and agree that the Mediator may request the parties and their counsel to meet in a group and discuss the issues and attempt settlement. In any case, the parties agree it is within the sole discretion of the Mediator whether private or group sessions will be required.
7. **SETTLEMENT AGREEMENT TO BE INDEPENDENTLY REVIEWED:** The parties acknowledge that if a partial or final settlement agreement is reached as a result of the mediation, the parties and their legal counsel shall be responsible for drafting the terms, obligations, and agreements of the parties in a written mediated settlement agreement. Any assistance provided by the Mediator in drafting the mediated settlement agreement shall be limited only to word processing or otherwise transcribing the terms, obligations, and agreements dictated by the parties and their respective legal counsel. Each Party shall have legal counsel review any proposed mediated settlement agreement prior to signing same. Each Party acknowledges that the Mediator is not providing legal advice or legal services in connection with transcribing any mediated settlement agreement.
8. **LEGAL REPRESENTATION.** All parties recognize that at the mediation session(s) and at every other point of the proceedings:
 - the mediator will not be acting as a legal advisor or representative for any or all parties;
 - the mediator has no duty to assert, analyze or protect any party's legal rights or obligations;
 - the mediator will not be responsible for drafting or filing any legal documents; and
 - the mediator makes no guarantee that the mediation session(s) will result in a settlement of all issues.
9. **TERMINATION OF MEDIATION.** The parties and their counsel acknowledge the Mediator has the sole discretion to terminate the session at any time if the Mediator believes an impasse has been reached, or that mediation should not be continued for any reason. The Parties agree that mediation will continue until such time as the Mediator terminates the mediation, even if the mediation session extends beyond the conclusion time stated in this Agreement.
10. **MEDIATOR TO ADVISE COURT OF OUTCOME:** The parties acknowledge that upon completion of mediation, the Court will be advised by the Mediator only whether or not the case was resolved/settled, or whether the mediation was recessed or was reset.
11. **NO ACTION AGAINST MEDIATOR.** The parties specifically stipulate and agree that no action may be brought against the Mediator arising from the discharge of his duties in connection herewith, and expressly agree that neither the Mediator nor anyone employed by or affiliated with him shall be liable to any party or its counsel for any act or omission relating in any way to or in connection with this mediation. Each party expressly covenants not to commence an action or administrative proceeding, in court or in mediation, against the Mediator concerning his services as Mediator. No party or counsel will ever subpoena the Mediator to testify in any action or proceeding, in mediation or otherwise, as to anything arising out of, relating to or

connected in any way with this mediation proceeding. The parties also agree that neither the Mediator nor anyone employed by or affiliated with him are in any way necessary parties in any judicial proceedings related in any way to this mediation proceeding. Each party agrees to hold the Mediator harmless against any claims, demands or lawsuits. The parties further agree that in the event a party does subpoena the Mediator to testify, that party shall compensate the Mediator at \$400 per hour for all the Mediator's time and expense related to the Mediator's response to the subpoena.

12. FINALITY OF AGREEMENTS AND RIGHT TO COUNSEL. All mediation participants are expressly advised to consult with independent legal counsel before signing any documents which result from the mediation process. All parties recognize that any agreements reached during the course of this mediation will be legally binding. **All parties recognize that any agreements reached during the course of this mediation will be legally binding.**

**WE HAVE READ AND UNDERSTOOD THE TERMS OF DOCUMENT AND HEREBY
AGREE TO BE BOUND BY ITS TERMS.**

DATED: DATE

signatures

(the attached Mediation Fee Schedule is a part of this agreement)

Mediation Fee Schedule Judge Gil Jones, Mediator

The mediation fee is established for a ½ day or full day mediation as follows:

| TYPE OF CASE | TIME SLOTS AVAILABLE & Fee per side | | |
|---|---|----------|-----------------------------------|
| | HALF DAY | FULL DAY | w/ credit card convenience fee |
| Divorce w/o children, minimal property issues | 350 | na | 360 |
| Divorce with children, minimal property issues | 400 | na | 411 |
| Divorce w/o children + property issues | 450 | na | 463 |
| Divorce w/ children + support, custody or property issues requiring more than ½ day. | na | 800 | 823 |
| CPS cases for parties with hired counsel | 450 | 800 | 463 / 823 |
| All other cases | 450 | 800 | 463 / 823 |
| Out of office but within 33 rd Jud. District | 500 % | 850 | 514/ 874 |
| Out of office but contiguous to 33 rd Jud. District | 600 + | 1000 | 617/ 1028 |
| Out of office beyond contiguous counties | 600 ++ | 1000 + | 617/ 1028 |

% San Saba \$570 for ½ day

+ plus travel time one way and mileage at state rate (53.5 cents for 2017). Will advise of time and travel charge upon booking.

++ plus travel time round trip and mileage at state rate (53.5 cents for 2017). Will advise of time and travel charge upon booking.

The fee stated is for each party. The number of parties is determined by counting all parties represented by the same counsel as one party. If one party is represented by multiple attorneys, that party is still considered as one party. Related parties, even with aligned interests, are considered as separate parties if they have separate counsel.

The stated fee includes the following:

1. Four hours of time for the ½ day and eight hours for the full day session.
2. Initial arrangements to accept the case and establish a date for the mediation session and limited telephone conferences with the attorneys.
3. Services outside of the actual sessions, such as phone calls, e-mails, faxes, copying, correspondence, a “reasonable” amount of case study and legal research, drafting of settlement agreements (or award letters), and reports to courts. If extra preparation work is required you will be notified in advance and an agreed amount of additional time will be billed at \$200 per hour divided between/among the sides and is due prior to the start of the mediation session.
4. Post-mediation filing of the Agreement (filing fee paid by attorneys).

When agreed in advance there may be an additional charge to reimburse the mediator for the cost of a mediation facility.

The fee is deemed fully earned even if the mediation takes less time than the stated hours, either because it settles or an impasse is declared. If a mediation continues beyond the allotted time then the additional time will be charged at \$200 per hour divided between/among the sides and payment is due at the conclusion of the day.

If a mediation is recessed and continued on another day, then the additional day or half-day fee will be paid in advance of such date. However, if a recess occurs roughly ½-way through the session then the resumption will normally not be charged separately if it is finished within the remaining time.

Some complex or multi-party cases may require more than one mediation session. You may schedule more than one session at the time the initial session is scheduled if you feel such to be necessary. In that event, the Mediation Fee will be based upon the total number of sessions scheduled and will be fully earned at the commencement of the initial session.

A mediation session can be scheduled “out of town” at a mutually convenient location. “Out of town” means in a county not contiguous with one of the counties of Burnet, Blanco, Llano or San Saba in which event the fee is different (see above). Unless otherwise agreed, for extended travel and overnight expenses excluding mileage are passed through at cost to the parties to be divided equally. If it is necessary to spend an additional day traveling to or from the mediation location, the mediation session will be billed as a multiple day session for the total number of days involved in traveling and conducting the mediation session.

The Mediation Fee is typically shared equally by all parties but you may apportion it as you wish. It is acceptable for one party to advance or pay the Mediation Fee on behalf of another party. In court-annexed mediation, the

full amount of the Mediation Fee will be reported to the Court; and will be taxed as costs of court, unless the parties agree otherwise.

Responsibility of Attorneys: Each party's attorney shall be responsible for the timely payment of all fees specified herein. The mediator reserves the right to refuse to commence the mediation session if all fees have not been tendered in acceptable form.

All fee payments shall be in the form of credit card or Square on the www.JudgeGilJones.com website, cash, cashier's check, insurance company check, corporate check or check drawn on the bank account of (or payment guaranteed by) a law firm and payable to Judge Gil Jones, Mediator at 1307 2nd Street, Ste D, Marble Falls, TX 78654. The Tax ID number is 74-2622672.

My goal as retired judge/mediator is to assist trial lawyers, their clients and the Courts in the prompt, efficient and cost-effective resolution of disputes. The day which has been scheduled for your mediation session has been set aside for you. Rescheduling and cancellation result in delay of resolution, inconvenience to counsel and clients, inactive days for the mediator and increased costs. Each day that is reserved for you reduces my flexibility in accommodating the busy schedules of other trial lawyers, clients and courts and results in lost opportunity for me to assist others in resolving their disputes.

Generally, we are all working within a time frame ordered by the Court or agreed to by the parties in scheduling the mediation session. Rescheduling the session will almost always result in the need to go beyond that time frame. Due to scheduling conflicts, it is frequently 30 days or longer before another session can be scheduled. In response to these concerns, I have found it necessary to establish the following policies and procedures:

Re-scheduling and cancellation policy

We all have to work diligently to find a date when everyone can convene. If necessary, I will intervene with the Court to request additional time under the Order of Referral for Mediation. The attorneys MUST consult with their clients prior to scheduling the mediation to insure that the date is available for them.

The date will be treated as a Court setting. I will not reset the mediation except for what would constitute good cause to postpone a trial. Please carefully consider your advance preparation before selecting a date. Once the date is set, please notify me immediately if you do not think the case will be ready to be mediated on the scheduled date.

If a date has been set, cancelled and reset, and the new date has been cancelled by any party to the mediation, a third mediation date will not be confirmed without prepayment of the full mediation fee from all parties. A date can be held for you temporarily; however, if payment in full is not received ten (10) business days prior to the third confirmed mediation date, the date will be released. In the unlikely event that a third confirmed mediation date is cancelled, the fee will be nonrefundable.

I do not typically charge for administrative expenses in a normal case. I do not charge a rescheduling fee if the case is rescheduled for reasons which would normally delay a trial. However, this excludes a cancellation for "additional discovery."

Cancellations due to settlement:

There is also no charge if a case settles prior to mediation, **provided that** I receive notice of the cancellation at least five business days in advance. Otherwise, if I receive notice less than 5 days in advance¹, the cancellation charge is as follows:

- Less than 5 but more than three days: 1/3
- Less than 3 but more than one day: ½
- Less than 1 full day in advance: full fee

Cancellations other than due to settlement:

In the event a case is reset for the convenience of a party, or a party decides to cancel an agreed mediation other than due to settlement, that party may be charged a rescheduling/cancellation fee of an amount up to the full mediation fee for the case. In the event that more than one party is requesting a reset or cancellation, the fee may be divided between all requesting parties. If at least two weeks' notice is given, there will be no charge assessed so please provide as much advance notice as possible.

¹ "Advance" counts as in Rule 21, e.g. for a Tuesday mediation, 5 business days in advance would be by 5pm Monday.