

MEDIATION AGREEMENT

This agreement describes the terms and conditions on which I am willing to provide mediation services.

1. Purpose:

- a. The object of mediation is to identify and frame issues, facilitate communication, and to explicate, explore, and evaluate options.
- b. I can assist in arranging for other professional services necessary to reach agreement.
- c. I will, upon request, draft a Marital Settlement Agreement to document the settlement reached.

2. Neutrality:

- a. I represent neither party. I will advocate on behalf of neither party. I am not employed as an attorney to represent either party and will never represent one party in a proceeding against the other.
- b. Absent an agreement to the contrary, I will not engage in conversation or other communication with one party to the exclusion of the other, except for the purpose of scheduling an appointment.
- c. If we agree that I should have one or more meetings with you individually, it would be with the understanding that I would not keep secrets from the other party. Nor would I communicate everything said to me by one person to the other. I will use my best judgment in deciding what to disclose and when to disclose it.

3. Confidentiality:

- a. By signing this agreement we all agree that I will never be required to disclose to any third party any information received or statements made during the mediation process without your mutual consent.
- b. By signing this agreement we agree that this mediation will be done pursuant to the provisions of Evidence Code Sections 1115 to 1138. A copy of these statutes is clipped to this Agreement.
- c. Evidence Code Section 1125(a)(5) provides that absent agreement to the contrary a mediation ends if there is no communication between the mediator and the parties for ten calendar days. By signing this agreement we agree that the mere

passage of time – of any duration ? without a contact between me and one of the parties shall not have the effect of “ending” the mediation in the sense of Section 1125(a).

d. The Evidence Code provides that while the communications made during mediation are privileged, evidence of an agreement made during mediation can be brought before the court. The Evidence Code is silent as to whether the mediator can be called as a witness to testify about the context, purpose, and design of the agreement. The parties agree that if I am called as a witness in a judicial proceeding, I may testify to the context, purpose, and design of any agreement reached in mediation. If preparation is necessary prior to my testimony, both parties or their representatives will have an opportunity to be present before I discuss the substance of the case with either. If I am called as a witness I will be compensated for all the time I spend on the matter at the rate set forth below by the party who calls me as a witness.

4. Full Disclosure:

a. California Family Code Section 2100 et seq. requires full and accurate disclosure at all states in an action for dissolution of marriage of all assets and liabilities, whether separate or community, and all income and expenses, regardless of the nature and source. The failure to make such a disclosure renders the Judgment based on agreement vulnerable to attack in the future.

b. By signing this agreement you both agree to fully and honestly disclose in the presence of the other party all information and documents such as financial statements, bank accounts, income tax returns, and other pertinent information I designate or request.

5. Outside legal counsel and support.

a. I encourage you to obtain outside legal counsel to provide you with independent legal advice. I also encourage you to obtain any other kind of professional support that you believe you need. It is especially important to have independent counsel to review and to advise on any agreement reached in mediation.

b. Provided that both parties agree and at least one party believes that it would be useful, I encourage the presence of professional advisors at actual mediation sessions.

6. Withdrawal:

a. Any of us can terminate or withdraw from mediation at any time.

b. In some cases it is useful to modify this provision with a further agreement by which the parties promise to take certain action in the event an impasse is reached.

7. Fees:

a. I will bill at the rate of \$250 per hour recorded in quarter hour increments.

b. I expect payment at the conclusion of each session, and I will not begin a session unless I've been paid for the one before.

c. Mediation fees will be paid by _____.

8. Approved:

Dated: _____
Brian Burke

Dated: _____

Dated: _____