

## The Islamic Center of Las Cruces

MASJID AL-HUDA

### ICOLC Mediation Process Proposal

An underlying principle of the Model is party autonomy. The parties are free to deviate from the model on any matter they wish. Thus should the parties wish to employ co-mediators (Article 2), restrict or expand the scope of confidentiality (Article 7), or allow the commencement of legal proceedings during the mediation (Article 9), they can reflect these choices in their modification of the Model.

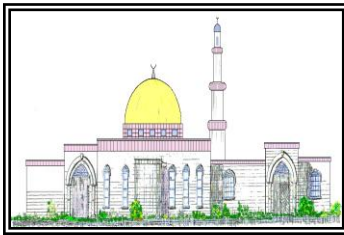
Mediation can be described as an assisted negotiation. The mediator is neutral and has no bias against any of the parties or their positions. He/she is the facilitator who assists the parties in reaching an agreement that is acceptable to them. The agreement is not imposed upon the parties; it is reached through the facilitated negotiation process typical of a mediation proceeding. Judges and arbitrators make decisions that are imposed on the parties.

Mediators may be requested during the course of a mediation to provide their evaluation of the probable outcome of a dispute were it to be litigated or arbitrated. If there is such an evaluation, it is done at the request of the parties but is not binding upon them unless they request and agree to it. Before mediation commences, the parties and the mediator agree upon the procedures that will be followed. It is the party's proceeding; they can fashion it in any way that makes sense to them and the mediator. This absence of formality provides for open discussion of the issues and allows the free interchange of ideas. Thus, it becomes easier to determine the interests of the parties and to fashion a solution that satisfies those interests.

The mediator keeps the process focused and moving forward.

#### MEDIATION RULES

All parties must sign before participating in any, and all sessions.



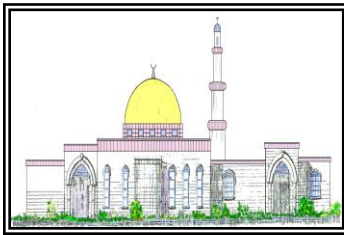
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### Article 1 - Definitions

In these Rules, the following terms shall have the following meanings:

1. Issue: the issue is to determine an agreement for a constitution for a nonprofit organization for the purpose of future management of the masjid property located at 1065 E Boutz Road, and transition of this responsibility from the Islamic Center of Las Cruces, Masjid al Huda, to the new organization. The mediation shall begin with a draft of the Islamic Center of New Mexico's constitution, attached, which shall then be edited page for page to draft an agreement to which all parties might consent. Two starting changes are herein agreed upon:
  1. All terms should be translated to English for legal clarity, unless all parties agree upon the Arabic term and no nearly English equivalent can be found.
  2. The section in the Islamic Center of New Mexico's current constitution which refers to a secondary advisory board called a "Shura Board or Counsel" shall be deleted and replaced with a plan for transitioning the current Shura Counsel out of management. Only one management Committee or Board will be created in the constitution we are drafting in mediation, and one election committee appointed prior to elections in a manner to be determined during mediation.
2. Mediation: procedure in which the Parties make an effort to resolve their Issue under the supervision of the Mediator(s) in accordance with the Rules.
3. Mediation Agreement: the written agreement in which the Parties agree to endeavor to resolve the Issue through Mediation, and instruct the Mediator to act as Mediator in respect of the Issue and the Mediator accepts this instruction.
4. Mediator: the person(s) who conducts the Mediation.
5. Party/Parties: the parties who wish to resolve the Issue through Mediation are:
  1. The Islamic Center of Las Cruces (ICOLC), represented by Radwan Jallad, Ameer of the Shura counsel—individual members of the Shura ICOLC counsel may have their own suggestions and opinions during the mediation process. However, any member of the Shura counsel who either withdraws from the mediation process in writing, contrary to the decision of the ICOLC Ameer and Shura Counsel, or who refuses to endorse an agreement which the ICOLC Ameer and Shura Counsel endorses under this mediation, or who endorses an agreement which the ICOLC Ameer and Shura Counsel rejects during this mediation, will be considered acting in violation of the operating agreements of the ICOLC, and is effectively resigning from the ICOLC Shura Counsel.
  2. And any and all Muslims residing in Las Cruces and outlying areas of Dona Ana County, NM, each representing himself or herself.
6. NAIT must agree to all agreements for them to become final
7. Dr. Omar Shaheen's suggested points of resolution received prior to mediation commencement, shall be considered at the corresponding subject matter sections of the constitutional edits during this Mediation.
8. Rules: these Rules.



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### **Article 2 – Appointment of the Mediator**

2.1. The Parties shall themselves appoint a mediator. All Parties must agree for an individual to be considered a mediator. On any scheduled mediation day if a mediator cannot be present, the Parties may nominate a substitute mediator. Two mediators shall be appointed to begin with: Dr. Omar Shaheen, and Imam Shakerat.

### **Article 3 – Commencement of Mediation**

The Mediation will commence as soon as the Mediation Agreement has been signed by the Parties and the Mediator, unless a different time is agreed in the Mediation Agreement. Any party who wishes to participate must sign this document.

### **Article 4 – Activities of the Mediator and process supervision**

4.1. The activities of the Mediator encompass the Mediation sessions which shall be conducted at the Islamic Center of Las Cruces, in the large prayer room. Mediator activities may also comprise breakout sessions with individuals, or groups, during the mediation, in other rooms of the Islamic Center, and studying papers, from the commencement of the Mediation onwards.

—women may sit in the room, or in the room behind a screen, or in the women’s prayer hall, as the individual sister chooses, and may not be impeded from equal participation verbally or by written comments at the time of the discussion.

4.2. All parties present may agree to any changes to 4.1.

4.3. The Mediator communication with individual Parties or groups must be strictly confidentially.

4.4. The Parties and the Mediator shall do their best to ensure that the Mediation proceeds expeditiously.

### **Article 5 - Voluntariness**

5.1. The Mediation shall take place on the basis of voluntariness of the Parties. Each Party, as well as the Mediator, may put an end to the Mediation at any time, or individuals may withdraw, noting that as long as the ICOLC and any Muslims from the community choose to continue, the mediation may continue.

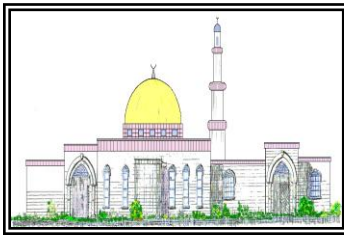
5.2. Any agreements made in the interim shall bind the Parties only insofar as the Parties confirm in writing the binding nature of these agreements in a signed agreement. They shall not be bound by the positions adopted or proposals made by them or by the Mediator during the Mediation. The Parties shall be bound only by that stated in the agreement referred to in Article 10.1 signed by the Parties.

### **Article 6 – Privacy**

6.1. No person shall be present at Mediation sessions other than the Mediator and the Parties, or their representatives and/or legal advisers, if any. For the involvement of other persons in the Mediation, the consent of all the Parties shall be required.

6.2. The Mediators should work together in assisting each other, and must inform all parties and each other if they wish to withdraw, or cannot be neutral.

6.3. If either Party causes himself to be represented during the Mediation, its representative must be authorized to perform all (legal) acts that are necessary for the Mediation, including the entering into an



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agreement as referred to in Article 10.1. A written power of attorney must be produced confirming that authority of the representative. However, no groups other than the ICOLC and NAIT, may form as parties to this agreement.

### **Article 7 - Confidentiality**

7.1. The entire Mediation process shall be strictly confidential and remain so after the Mediation has ended. The Parties undertake not to disclose, directly or indirectly, to any third party – including courts and arbitrators – any information concerning the Mediation, the positions adopted, proposals made or the information supplied within the Mediation, either orally or in writing. Any individual found to be disclosing other individuals' participation and using their comments or participation to intimidate or alienate the person in the Muslim community, is in violation of this agreement and may be asked to leave the mediation.

7.2. The Parties undertake not to reveal, quote from, refer to, paraphrase or in any other way invoke any documents that have been revealed, shown or otherwise disclosed during the Mediation by any other person involved in the Mediation. Documents that are otherwise admissible in an arbitral or judicial proceeding will not be rendered inadmissible by reason of their use in a Mediation. By documents as referred to in this Article includes the Mediation Agreement, notes or minutes drawn up by the Parties or by the Mediator within the framework of the Mediation, the agreement referred to in Article 10.1 insofar as the Parties have agreed in accordance with Article 10.3 that it shall remain confidential, as well as other data carriers, such as audiotapes, videotapes, photographs and digital files in whatever form.

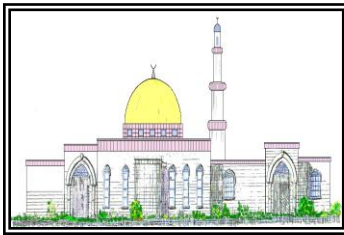
7.3. The provisions of Articles 7.1 and 7.2 also apply to the Mediator.

7.4. The Parties herewith waive the right to, at law or otherwise, use anything that has transpired during the Mediation in evidence against each other and/or, examine or cause each other, the Mediator or other persons involved in the Mediation to be examined as a witness or otherwise regarding information supplied and/or recorded during or in connection with the Mediation, or regarding the contents of the agreement as referred to in Article 10.1, all this to be construed in the widest sense possible.

7.5. All information supplied to the Mediator by either Party in the absence of the other Party, shall be treated by the Mediator as confidential, unless and insofar as the Party in question has explicitly given its consent to the disclosure of that information during the Mediation.

7.6. The provisions of Articles 7.1 to 7.5 shall not apply in the case of:

1. information concerning criminal acts in respect of which there exists a statutory obligation to report or a statutory right to report,
2. information concerning the threat of a criminal act, and
3. complaints, disciplinary or liability proceedings against the Mediator. In such event the Mediator shall be released from his/her obligation to observe confidentiality insofar as may be necessary in order to defend himself against the claims and/or make a claim under his/her professional liability insurance.



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### Article 8 – End of the Mediation

8.1. The Mediation shall end:

10. by the signing by the Parties of the agreement referred to in Article 10.1;
11. by a written statement from the Mediators to the Parties stating that the Mediation has ended, if both Mediators wish to end it and an alternate Mediator cannot be agreed upon;
12. by a written statement from either Party to the other Party or Parties and to the Mediator stating that it withdraws from the Mediation.
  1. However, mediation shall not terminate if just some Muslims withdraw from the process. As long as the ICOLC is willing to continue and Muslims from Las Cruces and Dona Ana County want to participate, the process shall continue.

8.2. Termination of the Mediation shall leave the obligations of confidentiality under the Mediation Agreement intact.

### Article 9 – Other proceedings

9.1. Any legal or similar proceedings already pending on commencement of the Mediation regarding the Issue or parts thereof – with the exception of steps to safeguard rights – shall be stayed by the Parties for the duration of the Mediation.

9.2. The Parties undertake for the duration of the Mediation not to institute any proceedings as referred to in Article 9.1 against each other, with the exception of steps to safeguard rights.

9.3. If a Party takes steps to safeguard rights, or institutes proceedings other than those referred to in Article 9.1, that Party shall be obliged to notify this to the Mediator and to the other Party or Parties within 24 hours after having taken such steps or after having instituted such proceedings.

### Article 10 - Recording the outcome of the Mediation

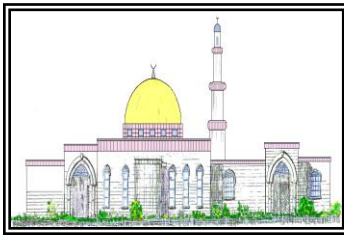
10.1. Daily summaries shall be drafted on the spot at the mediation, with disputed terms highlighted to be returned to. The Islamic Center of Las Cruces Shura Counsel shall appoint a party to do the drafting unless the mediators choose to do so themselves. The Parties shall be responsible for the contents of the agreement. They must examine it after each session for edits or errors and propose changes in the next session, unless the proposal is a material change of terms agreed upon in the previous sessions, which must be re-addressed at the end of the page by page mediation process. Drafting on a projection, in full view, will be preferable. The Parties shall have the right to call in the advice of an external expert.

10.2. The Mediator shall not be liable for the contents of the agreement concluded by the Parties nor for any damage that may arise from the same.

10.3. The contents of the concluded agreement may in any case be submitted to a court if necessary in order to enforce the agreement.

### Article 11 – Limitation of liability

Any liability of the Mediator in case of damage caused by any act or omission of the Mediator in the Mediation, shall be limited to at most the amount of any proceeds paid out by his/her professional liability



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insurer. Except for intentional act or gross negligence on the part of the Mediator, the Parties undertake to hold the Mediator harmless for any claims against the Mediator at any time and which are related to acts or omissions of the Mediator during the Mediation.

### **Article 12 – Rules of conduct and complaints**

Unless the Mediation Agreement indicates a different set of Rules, the Mediator(s) and all participants shall be bound by the Rules of this mediation as drawn up in this document.

### **Article 13 – Matters not addressed**

The Mediator and parties shall act in accordance with the spirit of these Rules.

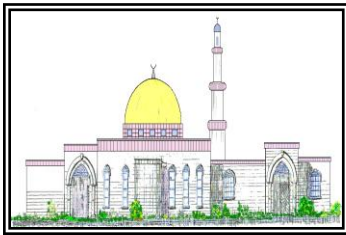
### **Article 14 – Applicable law**

These Rules shall be governed by the law of New Mexico

### **Article 15—Format for conduct during mediation**

Mediators shall begin with the rules and then proceed in covering, paragraph by paragraph a review and editing of the Islamic Center of New Mexico's Constitution.

1. Mediators shall give all parties who wish to speak 3 minutes maximum after each paragraph or section is read. Second turns may be given after all others who want have had a turn.
2. Parties take turns speaking and do not interrupt each other.
3. Parties and mediators discuss solutions to disagreement.
4. Break out discussions occur if necessary
5. Parties call each other by name or "brother" or "sister"
6. Parties will not blame, attack, or engage in insults, and will instead ask questions of each other to clarify or gain understanding of each other's positions.
7. Parties will avoid hard positions but express instead interests and desired outcomes.
8. Parties will listen respectfully and sincerely to try to understand the other person's interests.
9. Parties will not dwell on things that did not work in the past but focus on solutions and the organization they wish to create.
10. Parties will agree to make a conscious, sincere effort to refrain from unproductive arguing, venting, and narration and will use mediation time to work for what we perceive as the fairest and most constructive agreement possible.
11. Parties will speak up if they feel the mediation is not working, or some part of the mediation.
12. Parties will speak up if they feel the mediator is not being impartial as to parties, or issues being mediated and terms of agreement.



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Signatures

Names

Date