



## **California Agricultural Mediation Program**

California Dept. of Food and Agriculture, Suite 400

1220 N Street, Sacramento, CA 95814

[www.CALAMP.org](http://www.CALAMP.org) (916) 330-4500

### **Agreement to Mediate**

#### **I. Mediation**

The goal of mediation is to exchange information and to consider options that could resolve the dispute on mutually acceptable terms. We agree to participate in this dispute resolution process in good faith in an attempt to resolve the dispute.

#### **II. Mediator**

The mediator acts as a neutral facilitator to assist the parties in reaching a settlement that is acceptable to them. The mediator does not represent any party and has no bias against any party or their position. The parties agree that the mediator is not acting as an attorney or providing legal advice on behalf of any party.

The mediator controls the procedural aspects of the mediation. The parties agree to fully cooperate with the mediator.

#### **III. Participants and Procedure**

The process is voluntary and non-binding. Each party may be represented by another person. At least one person – the party or the party’s representative – must be authorized to negotiate a settlement of the dispute. The parties are responsible for any fee or expense incurred by their respective representatives, subject to this being modified in any agreement that results from this mediation.

The parties, and if they desire, their representatives are invited to attend mediation sessions. No one else may attend without the permission of the parties and the consent of the mediator.

During the session, the mediator may have joint and separate meetings with the parties and their counsel. During a separate meeting, unless otherwise agreed, if a party informs the mediator that information is being conveyed to the mediator in confidence, the mediator will not disclose the information.

#### **IV. Disclosure**

The mediator, each party, and counsel confirm that they have disclosed any past or present

relationship or other information that a reasonable person would believe could influence the mediator's impartiality and that no conflict of interest or appearance of a conflict of interest exists.

## **V. Confidentiality**

In order to promote communication among the parties, counsel and the mediator and to facilitate settlement of the dispute, each of the undersigned agrees that the entire mediation process is confidential. All statements made during the course of the mediation are privileged settlement discussions, and are made without prejudice to any party's legal position, and are inadmissible for any purpose in any legal proceeding. This is intended to encourage free and open discussion of the issues and is designed to prevent the admission of statements made during, or documents prepared for use in the mediation.

Offers, promises, conduct and statements made pursuant to mediation (a) will not be disclosed to third parties except persons associated with the participants in the process, and (b) are privileged and inadmissible for any purposes, including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provisions including the California Evidence Code §§1115-1128.

Confidentiality does not attach to publicly filed documents or information that is otherwise discoverable merely because such documents or information are presented in the course of mediation. Any confidentiality is otherwise limited to the same extent provided under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law.

## **VI. Disqualification of Mediator and Exclusion of Liability**

Each party agrees to make no attempt to compel the mediator's testimony, nor to compel the mediator to produce any document provided by the other party to the mediator.

The parties agree that the mediator is not a necessary party in any arbitral or judicial proceeding relating to the mediation or to the subject matter of the mediation.

All parties understand that even if the mediator expresses his or her views to the parties on the legal issues, the mediator is not providing them legal advice, and the mediator is not representing any party. Should the parties have any legal questions, they should consult an attorney who would represent only their interests. Neither the Environmental Mediation Center nor its employees or agents, including the mediator, shall be liable to any party for any act or omission in connection with any mediation conducted under this Agreement.

## **VII. Termination**

Parties acknowledge that, although the mediator will use his/her best efforts to help the parties resolve the issues surrounding the mediation process, the Environmental Mediation Center cannot guarantee that a resolution will occur. Either party or the mediator can elect to terminate the process at any time. In the event that any party to this agreement believes that continuing to participate in the mediation process is not in his/her best interest, or that the mediation process is not being pursued in good faith, or for any other reason, a party or the mediator may terminate the mediation process, recognizing that the parties will continue to be bound by the confidentiality provision. This agreement shall automatically terminate upon the death of any party.

Parties and the mediator agree to waive the provisions of the California Evidence Code §1125(a)(5) which requires mediation to terminate if there is no communication between the mediator and either of the parties related to the mediated matter for ten calendar days.

BY: (print) \_\_\_\_\_ (sign) \_\_\_\_\_

FOR: \_\_\_\_\_ DATED: \_\_\_\_\_

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FOR: CALAMP Mediator DATED: \_\_\_\_\_