

# **Agreement to Mediate**

## **Hawaii Agricultural Mediation Program**

### **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, if a party informs the mediator that information is being conveyed to the mediator in confidence, the mediator will not disclose the information.

If a party wishes to terminate its participation for any reason, it may do so by giving notice to the mediator and the other parties. The parties will continue to be bound by the confidentiality provisions of this agreement.

#### **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.

These offers, promises, conduct and statements (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. 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.

Notes taken by the participants during the mediation do not become part of the USDA appeal record. All notes taken by the participants as part of the USDA Natural Resources Conservation Service case must be destroyed. 7 C.F.R. 614.11(g).

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

Each party agrees to make no attempt to compel the mediator's or any HIAMP staff's testimony, nor to compel the mediator or any HIAMP staff to produce any document provided by the other party to the mediator or to HIAMP. The parties agree to defend the mediator and HIAMP from any subpoenas from outside

parties seeking confidential information arising out of this Agreement or mediation. The parties agree that neither the mediator nor HIAMP is 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. Should the parties have any legal questions, they should consult an attorney who would represent only their interests. Neither HIAMP 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. Auditing.**

The parties understand that for the purposes of auditing the mediation program, the USDA, including the USDA Inspector General, the Comptroller of the United States, the Administrator, and any of their representatives will have access to pertinent records as necessary to conduct audits or evaluations of mediation services funded in whole or part by the USDA. 7 C.F.R. 785.9.

BY: \_\_\_\_\_

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

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

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

\_\_\_\_\_

HIAMP Mediator