

# AGREEMENT TO MEDIATE

## Farm Mediation and Arbitration Program

In exchange for their mutual promises and other good and valuable consideration, ( \_\_\_\_\_ ) and, ( \_\_\_\_\_ ) the parties, agree as follows:

Each party has voluntarily chosen to work toward a resolution of a dispute through the mediation process. Each party agrees to participate in the mediation process in good faith, to provide full and accurate information, and to work toward an equitable resolution to issues in dispute. Parties recognize and understand that mediation is a voluntary process and that any party has the right to withdraw from mediation at any time. Any party who withdraws from mediation after signing this agreement will provide the mediator with written notice of intent to withdraw. Notice shall be provided in a clear and timely manner to allow the mediator sufficient time to notify other parties of the withdrawal.

Any party may notify the mediator of the existence of additional parties whose participation in the process is desirable or necessary to reach resolution. If an additional party agrees to participate in mediation, the additional party will need to agree, in writing, to the terms and conditions included in this "Agreement to Mediate".

Any party may request that an advisor, attorney, consultant or other expert be present at mediation. Any advisor, attorney, consultant or expert who is present during mediation meetings will be asked to sign and be bound by the terms of this "Agreement to Mediate". Parties are solely responsible for all expenses related to the participation of an advisor, attorney, consultant or expert in the mediation process unless the parties agree to other arrangements. In no event shall the Farm Mediation and Arbitration Program (FMAP) or the Department of Agriculture, Trade and Consumer Protection (DATCP) be responsible for expenses related to advisors, attorneys, consultants or experts, except for expenses incurred by volunteer farm advisors assigned by the Wisconsin Farm Center.

The mediator has the right to terminate any mediation session if the mediator believes it would be in the best interest of the process or the parties. A mediator may terminate any mediation session or refer the mediation case to the FMAP for closure if the mediator believes that anyone in attendance at a mediation session, including any party, advisor, attorney, consultant, expert or other person in attendance at a mediation session, is using the process for inappropriate discovery purposes or otherwise participating in a manner which is disruptive, disparaging, or in a manner not in the best interest of the mediation process

Each individual signing this agreement either represents his or her own interests or confirms that he or she has authority to participate on behalf of another interested party.

Wis. Stat. section 93.50(2m) provides that a court may enter an order suspending any pending court action if all parties to the action stipulate to the suspension. Unless otherwise agreed, the party who requests a suspension of court action is responsible for obtaining an order and providing a copy to the mediator. In the absence of a stipulation to suspend pending and/or existing court actions, it is agreed that FMAP may choose not to provide mediation services.

Each Party in mediation agrees to refrain from initiating any court action against any other party in mediation while mediation continues.

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The Parties, agree to respect the confidentiality of the mediation process. The agreement to respect confidentiality is not intended to prohibit any party from revealing information obtained through the mediation process for the purpose of receiving advice or assistance from an accountant, attorney, therapist, or other professional consultant.

The Parties, agree to not have any weapons, concealed or otherwise, while participating in a mediation session.

The mediator shall keep confidential all information and records obtained in conducting mediation. The mediator shall reveal to the FMAP Mediation Coordinator any information the mediator is mandated by law to disclose and may disclose any information necessary to discuss the mediation case with the Coordinator or other FMAP staff as appropriate.

If the Farm Service Agency (FSA) is a party, mediation records in possession of the FMAP may be reviewed by the FSA Administrator or authorized representatives under procedures established by the FMAP.

The mediator shall not reveal to a third party any information received during mediation or any statement made during the mediation process, unless required to do so by law or with consent of DATCP and all parties. The mediator shall not be subpoenaed or otherwise compelled to disclose any information obtained during mediation or to provide testimony or evidence for administrative hearings, litigation or any other judicial or quasi-judicial proceeding, except under conditions outlined in Wis. Stat. §904.085(4) and those set forth above.

A mediator shall disclose any potential conflicts of interest to all parties. A mediator must withdraw if he or she is unable to act in a fair and impartial manner. Any party may petition the FMAP, in writing, for substitution of a mediator. If there are reasonable grounds to believe that a conflict of interest exists or that there are other factors which may be detrimental to the mediation process to continue the FMAP will appoint another mediator.

All parties acknowledge that a mediator assigned to the mediation that is the subject of this Agreement has immunity from civil liability, under Wis. Stat. s. 93.50(2)(c), with regard to any act or omission within the scope of the mediator's performance of the mediator's powers and duties.

The mediator will work with the parties to determine the issues that will be included in the mediation process. The mediator may not recommend a particular resolution or provide legal, financial or therapeutic advice to any party. The mediator may not, at any time, provide legal, financial or therapeutic advice with regard to any issue raised during the mediation process. The mediator may not provide legal, financial or therapeutic advice with regard to any unrelated matter for a period of at least one-year from the date the mediation case that has been administratively closed by the FMAP.

Agreements resulting from mediation are considered tentative until all terms and conditions have been approved by the parties. The parties agree to allow a reasonable period of time, which shall be two weeks unless otherwise agreed to, to obtain appropriate legal, financial or other advice prior to an agreement becoming binding. If an agreement contains terms or conditions which require acceptance by a party not involved in the mediation process the agreement will not be binding on the parties until such acceptance has been obtained.

At the conclusion of mediation, the mediator will return an original, signed copy of all documents to the FMAP. Materials returned to the FMAP will be retained according to a record disposal authority on file at DATCP for the FMAP. Any material not retained will be destroyed in a manner, which protects the confidential nature of the material.

This Agreement to Mediate is a binding contract for those parties who agree to the terms of the agreement by signing below.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) \_\_\_\_\_
- 6) \_\_\_\_\_

Mediator: \_\_\_\_\_