



**PARTICIPANTS' AGREEMENT TO MEDIATE
ENVIRONMENTAL APPEALS BOARD
EAB File No. INSERT**

In the matter of the mediation of the appeal of the decision of the Director, <INSERT> Region, Environment and Parks, to issue <INSERT> under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, OR *Water Act*, R.S.A. 2000, c. W-3, to the <INSERT>, authorizing <INSERT>.

Between the Participants:

<INSERT APPELLANT NAMES>

Represented by < INSERT NAME>

and

<INSERT APPROVAL HOLDER NAMES>

and

<INSERT>, Director, Operations Division, <INSERT> Region, Environment and Parks

Represented by <INSERT>, Alberta Justice and Solicitor General

and

<INSERT COUNTY/TOWN OR MUNICIPAL DISTRICT> **if applicable see clause No. 10**

INSERT NAMES

The Participants agree as follows:

1. The purpose of this Agreement is to indicate the intention of the undersigned to participate in mediation in an effort to resolve this appeal.
2. The Participants have been advised to seek independent legal advice, to ensure that they are fully informed of their legal rights and obligations.

3. The Mediator has been appointed by the Environmental Appeals Board (EAB) to assist the Participants in reaching a mutually agreeable resolution of the appeal, based on full and frank disclosure between them.
4. All communications made to or through the Mediator and EAB staff who attend the mediation shall be confidential and without prejudice to the position of a Participant in any further proceedings. This means that communications exchanged during this mediation can only be raised in subsequent Environmental Appeals Board proceedings or court proceedings with the written consent of all Participants. Confidentiality does not apply to the documents, records, materials or other correspondence provided to the EAB with respect to the main part of the appeal even if they are used in the context of the mediation. Participants are not permitted to record the mediation meeting.
5. The Mediator and EAB staff who attend the mediation are not compellable as witnesses and shall not be called as witnesses by any of the Participants in any subsequent hearings or court proceedings.
6. The Mediator will not take part in any subsequent deliberations, discussions or hearings of the EAB pertaining to the matters of this appeal.
7. In accordance with section 12 of the Environmental Appeal Board Regulation, A.R. 114/93, if a resolution of the appeal is reached, either a Report and Recommendations reflecting the agreed upon resolution will be submitted by the EAB to the Minister of Environment and Parks or the EAB will issue a decision reflecting the resolution.
8. The Participants acknowledge that the EAB does not generally award costs relating to the preparation for or attendance at a mediation. The Participants agree they shall not submit a request to the EAB for costs respecting the mediation after the conclusion of the mediation. This does not preclude costs between the Participants being addressed in an agreement between the Participants.
9. The Participants will abide by the terms of this Agreement and at all times negotiate in good faith.
10. The Participants acknowledge that they are fully authorized to represent, negotiate and, if necessary, bind them on all of the matters set out in the Notice of Appeal <USE IN THE CASE OF COUNTY, TOWN OR MUNICIPAL DISTRICT PARTICIPATION. The Participants acknowledge that the Municipality can only agree to make a recommendation to their Council.>
11. By signing this Agreement, the Participants agree to abide by the EAB Ground Rules for Mediation Meetings contained herein.

Ground Rules for Mediation Meetings

Confidentiality

In order to facilitate open and frank discussion and enhance communication during the mediation, the EAB requires that these mediations not be open to the general public. The EAB mediations are confidential proceedings. Any resolutions reached in mediation are subject to public review under the *Freedom of Information and Protection of Privacy Act*.

In order to enhance the free flow of appropriate information, to allow for discussion of past differences, and to encourage the generation of options for solution; the EAB also abides by the following confidentiality constraints:

1. If the mediation does not result in a resolution, any offers, tentative agreements, or other proposals are not admissible in formal EAB proceedings.
2. If the mediation does not result in a resolution of the appeal, comments, statements, and dialogue beyond the issues of fact and evidence that will be the subject of a formal EAB hearing, are not admissible in the formal EAB proceedings.
3. The Mediator and EAB staff who attend the mediation are not compellable as witnesses and will not be called as witnesses by any of the Participants in any subsequent hearings or court proceedings.
4. The Mediator will not take part in any subsequent deliberations, discussions or hearings of the EAB pertaining to the matters of the appeal that is mediated by them.

Communication Among Participants

In order to facilitate an open, constructive and collaborative discussion, all Participants to the mediation, including third party observers, will abide by the following communication ground rules:

1. Only one person will speak at a time and no one will interrupt when another person is speaking.
2. Each person will express his or her own views rather than speaking for others.
3. No one will make personal attacks. If a personal attack is made, the Mediator will ask the Participants to refrain from personal attacks. If personal attacks continue, the Mediator will ask the Participants to take a break to "cool off".
4. Each person will make every effort to stay on track with the agenda and avoid grandstanding and digressions in order to move the deliberations forward.

5. Participants are expected to communicate concerns, interests and ideas openly and to make the reasons for their disagreements clear.
6. In the event that a Participant is unable to speak about a concern directly to other Participants, he or she can speak with the Mediator in a private caucus during the mediation. Upon request, all information or views shared during conversations with the Mediator will be kept confidential.

Third Party Observers

At times, Participants to the appeal may wish to invite a third party observer to the mediation. In order to protect the confidentiality and fairness of the process and the informed consent of the Participants, the EAB requires the following in regard to such invitation of a third party observer:

1. Participants to the appeal will notify the EAB prior to the mediation of any third party observer that they would like to invite.
2. Participation of a third party observer in the mediation requires the consent of all Participants to the appeal.
3. The third party observer will sign and abide by the Participants' Agreement to Mediate.

Media/Correspondence

Outside of the confidential mediation, Participants are free to make statements to the media and in their own correspondence regarding their own opinions, but agree to not attribute statements to others involved in the mediation. In order to facilitate productive deliberations, Participants will make every effort to abide by the ground rules under the section "Communication Among Participants" listed previously while interacting with the media.

Role of the Mediator

The Mediator has been appointed by the EAB to assist the Participants in reaching a mutually acceptable resolution of the appeal, based on full and frank disclosure between them. Please note the following in regard to this Mediator role.

1. The Mediator is not serving in the role as a judge or decisionmaker.
2. The Mediator is a neutral facilitator who can encourage dialogue and ensure productive conversations, and assist the Participants in understanding one another's interests, considering options for resolution, and reaching an acceptable resolution.
3. The Mediator will maintain impartiality toward all Participants during the mediation.

Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all participants as opposed to a single Participant.

Terms of the Resolution

If a resolution is reached between the Participants, the terms of the resolution will be included in a written document that the Participants would sign. There are two types of clauses that can be included in the resolution:

1. Regulatory Clauses

Regulatory clauses result in a change to the conditions included in the regulatory document (usually the Approval or Licence). Only certain clauses fall into this category and can actually become a part of the regulatory document. An example of a regulatory clause is when the Participants agree that an additional monitoring requirement be added to the Approval. If the Minister approves the clause, Environment and Parks can enforce it just like any other clause in the regulatory document.

2. Contractual Clauses

Contractual clauses are solely between the Participants and do not become part of the regulatory document. The EAB or Environment and Parks cannot enforce these clauses. These clauses result in a contract between the Participants that can be enforced through court action or by obtaining a private arbitrator or mediator.

Resolutions that include regulatory changes (to Approvals or Licences for example) are subject to the approval of the Minister of Environment and Parks pursuant to section 100(1) of the *Environmental Protection and Enhancement Act*.

Dated at INSERT LOCATION, Alberta on INSERT DATE.

INSERT NAME
Represented by INSERT

INSERT NAME
Represented by INSERT

INSERT NAME
Represented by INSERT

INSERT NAME
Represented by INSERT

INSERT NAME
Represented by INSERT

INSERT NAME
Represented by INSERT

INSERT NAME
Represented by INSERT

INSERT NAME
Represented by INSERT

The Board's practice is to not require legal counsel to sign this Agreement. As members of the Law Society of Alberta, they are bound by the Society's rules and professional code of conduct. They are also bound by the confidentiality rules of this Agreement as a result of solicitor-client privilege.

M:\WPDOCS\Mediation Forms\Mediation Agreement.doc