

**U.S. Environmental Protection Agency  
Environmental Appeals Board**

**Agreement to Participate in Alternative Dispute Resolution (“Agreement”)**

Case Name: \_\_\_\_\_

Appeal Number: \_\_\_\_\_

The parties to this Alternative Dispute Resolution (“ADR”) matter (collectively “parties”) voluntarily agree to participate in good faith in the ADR program of the Environmental Appeals Board (“EAB” or “Board”). The parties acknowledge that they have read the Board’s ADR Information Sheet available on the Board’s website, understand the Board’s ADR program, and have had the opportunity to ask the EAB ADR Judge or EAB ADR Counsel any questions that they may have about the program. As explained in the Information Sheet, the confidentiality provisions of the Administrative Dispute Resolution Act (“ADRA”), 5 U.S.C. §§ 571-84, apply to this ADR process.

To promote frank and productive discussion, the parties agree that the Board’s ADR process is confidential. The parties agree not to disclose oral or written communications made during the ADR process, including proposals, offers, or other statements, whether made privately to the ADR Judge or the ADR Counsel or when all parties are present, unless such disclosure is in compliance with the ADRA.<sup>1</sup> Each party agrees that it will not seek to compel the testimony of the ADR Judge, ADR Counsel, or any persons who may have acted as staff to the ADR Judge or ADR Counsel as a witness in any court or administrative proceeding and will not seek to compel the production of any EAB-retained documents related to this ADR proceeding in any court or administrative proceeding except to the extent allowed by the ADRA.<sup>2</sup> The parties further understand that any documents generated for purposes of ADR or any notes taken during the ADR process by the ADR Judge and ADR Counsel will be retained by the ADR Judge and ADR Counsel until the ADR process has been completed. All such documents and notes will be destroyed in accordance with Agency records retention policies.

The parties understand that the ADR Judge and ADR Counsel serving as neutrals in this ADR process have no authority to decide this matter and are not acting as advocates for either party. No party shall be bound by anything occurring during this ADR process unless a written agreement is signed by all necessary parties. Neither the ADR Judge’s nor ADR Counsel’s opinions or assessments during the ADR will necessarily predict the outcome if the case is returned to the Board for adjudication of the issues. Additionally, any opinions or assessments

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<sup>1</sup> The ADRA requires parties to keep dispute resolution communications confidential except in certain circumstances such as when all parties consent in writing, the information is already public, or a court determines disclosure is necessary. *See* 5 U.S.C. § 574(b).

<sup>2</sup> The ADRA prohibits a neutral from disclosing voluntarily or through discovery or compulsory process dispute resolution communications except in certain circumstances similar to those described in note 1 above. *See* 5 U.S.C. § 574(a).

of the ADR Judge or ADR Counsel may not be cited in any subsequent proceedings that may occur.

The parties understand that this ADR process can be terminated at any time and for any reason by any party or by the ADR Judge. If ADR is terminated and a matter is returned to the panel of Board Judges assigned to adjudicate the case, neither the ADR Judge nor ADR Counsel will participate, in any way, in the Board's resolution of the matter.

The parties recognize that the Board's ADR program is intended as an expeditious process that should be completed within a limited time period. The parties agree to make themselves available to participate in ADR and conclude the process and any settlement agreement without delay.

This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement.

By signature below, we acknowledge that we have read, understand, and agree to the terms of this Agreement to Participate in ADR.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Name (print)

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Title

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Title

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Organization

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Organization

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Date

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Date