

**COMPREHENSIVE COUNTY UTILITY ASSESSMENT PROJECT  
PARTICIPATION AGREEMENT**

This Comprehensive County Utility Assessment Project Participation Agreement (“the Agreement”) is made and entered into as of \_\_\_\_\_, by and between Franklin County Board of Commissioners and the City of Columbus, Ohio.

**BACKGROUND INFORMATION**

WHEREAS, Franklin County owns and operates sewage collection and water distribution systems that are connected to and served by the City of Columbus; and

WHEREAS, Franklin county owns and operates a wastewater plant (Darbydale) and a water plant (Timberlake) that are not connected to Columbus; and

WHEREAS, the City and County would like to obtain a thorough analysis of the County’s utility systems; and

WHEREAS, it is necessary to contract with a consultant to provide this comprehensive analysis; and

WHEREAS, the parties desire to have the City enter into an Agreement with the consultant selected by mutual agreement among the parties; and

WHEREAS, the costs for hiring the consultant for this initiative are estimated to be approximately \$1,000,000.00; and

WHEREAS, the parties recognize that the costs for the hiring of the consultant should be shared equally by the parties; and

WHEREAS, subject to approval and appropriation by City Council and the Board of County Commissioners, each of the parties intends to provide funds to finance one half of the costs of the consultant, which funds shall be provided to Columbus to be used by Columbus, as the financial agent for the parties hereto, to pay such costs.

NOW THEREFORE, in consideration of the above Background Information and the mutual promises and covenants contained in this Agreement, the parties hereto, intending to be legally bound, agree to the above Background Information and as follows:

1. Consultant. Subject to approval and appropriation by City Council and the Board of County Commissioners, the parties agree that they shall jointly retain a consultant selected by mutual agreement of the parties, at a cost not to exceed One Million Dollars (\$1,000,000.00), to perform a comprehensive assessment of the County utility systems. The parties agree that the consultant will be selected using the City’s RFP process for professional services.

2. Columbus to Act as Agent. The parties agree that Columbus shall act as agent for purposes of a contract but both parties shall be considered by the consultant as an equal partner and client in the contract. Thus, Columbus shall enter into a contract with the consultant (the "Contract") and shall oversee payments to the consultant for work performed pursuant to the Contract.

3. Payment of Contract Costs. Subject to approval and appropriation by City Council and the Board of County Commissioners, the parties intend to jointly finance the costs of the Contract and to appropriate monies for the hiring of a consultant on an equal basis, with each parties share not to exceed \$500,000.00.

a) Columbus agrees to notify Franklin County of the amount of each payment pursuant to the Contract as each such payment comes due, and Franklin County agrees to pay to Columbus one half of each such payment within forty-five (45) days of such notice.

c) Columbus agrees to make each payment to the consultant pursuant to the Contract in a timely manner.

4. Scope of Work. The parties agree to work cooperatively to develop a Scope of Work for the Contract and agree that any and all changes to this scope will require a consensus of the parties.

5. Participation. Each party agrees to assign a representative to attend meetings with the consultant. Franklin County agrees to provide access to any documentation it has as requested by the consultant and to give the consultant physical access to its premises as necessary for the consultant to perform the assessment. Each party agrees that decisions made concerning the consultant will be based upon a consensus.

6. Warranties. Each party represents, warrants and covenants to the other parties that (1) the officer or officers executing this Agreement on behalf of the party is or are duly authorized to enter into this Agreement on behalf of the party; (2) each party has all necessary power and authority to enter into this Agreement; (3) the execution of this Agreement constitutes the valid and binding obligation of the party in accordance with its terms and (4) approvals necessary to cause this Agreement to be effective and binding against each party have been or will be enacted and granted.

7. Notices. All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the appropriate Notice Address or hand delivered to the other parties at the following addresses:

Columbus  
ATTN: Susan Ashbrook, Asst. Director  
Department of Public Utilities  
910 Dublin Road

Columbus, Ohio 43215

Franklin County  
ATTN: Stephen A. Renner, Director  
Franklin County Dept of Sanitary Engineers  
280 E. Broad Street, Suite 201  
Columbus, Ohio 43215-4520

8. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns. Each party shall at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in this Agreement. Each provision of this Agreement is binding upon such officer of each party as may, from time to time, have the authority or duty under law to take such actions as may be necessary to perform all or any part of the duty required by such provision.

9. Amendments, Changes and Modifications. This Agreement may only be amended by written instrument executed by all parties to this Agreement.

10. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part hereof, made, assumed, entered into or taken hereunder or any application hereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect the remainder hereof or any other section or provision hereof or any other covenant, stipulation, obligation, agreement, act or action, or part hereof, made, assumed, entered into, or taken hereunder, which shall be construed and enforced as if such illegal or invalid portion were not contained herein, nor shall such illegality or invalidity of any application hereof affect any legal and valid application hereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part hereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

11. Term. The term of this Agreement shall be the same as the term of the Contract with the consultant retained in accordance with this Agreement.

12. Governing Law. This Agreement shall be governed exclusively and construed exclusively by and in accordance with the laws of the State of Ohio.

13. Assignment. This Agreement may not be assigned by any of the parties without the prior written approval of the other parties, except to a transferee through a merger or consolidation and only if such resulting entity expressly assumes in writing, in a form satisfactory to the other parties, all obligations of the party under this Agreement.

14. Entire Agreement. This Agreement is signed by the parties as a final expression of all of the terms, covenants and conditions of their Agreement and as a

complete and exclusive statement of its terms, covenants and conditions, and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.

15. Counterparts. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

16. Legislative Approval. The financial obligations of the parties herein are contingent upon the passage and effectiveness of legislation from their respective legislative bodies authorizing the execution of this Amendment and appropriating the funds therefore.

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IN TESTIMONY WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized officers all as of the date hereinbefore written.

CITY OF COLUMBUS

By \_\_\_\_\_  
Tracie Davies, Director  
Department of Public Utilities

Date \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

**THE FRANKLIN COUNTY BOARD OF COMMISSIONERS (Board)**

\_\_\_\_\_  
Kevin Boyce, President

Date \_\_\_\_\_

\_\_\_\_\_  
Marilyn Brown, Commissioner

Date \_\_\_\_\_

\_\_\_\_\_  
John O'Grady, Commissioner

Date \_\_\_\_\_

**APPROVED AS TO FORM**

\_\_\_\_\_  
Assistant Prosecuting Attorney

\_\_\_\_\_