

**EXHIBIT “B”**

**RESTORATION PLAN AGREEMENT**

This RESTORATION PLAN AGREEMENT (the “AGREEMENT”) by and between **COLUMBIA GAS OF OHIO, INC.** (“CGO”) and the **CITY OF COLUMBUS, OHIO**, which is acting by and through its DEPARTMENTS OF RECREATION and PARKS AND PUBLIC UTILITIES (“CITY”, “PUBLIC UTILITIES”, or “CRPD”), a municipal corporation, 1111 E. BROAD STREET, COLUMBUS, OHIO 43215, is entered into on \_\_\_\_\_, 2012 (“CGO”, “CITY”, and “CRPD” collectively referred as “PARTIES”).

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- A. **WHEREAS**, CGO intends to construct an underground natural gas pipeline (IMPROVEMENTS) in, on, under, and through City-owned real property commonly known as Como-Park (PROPERTY);
- B. **WHEREAS**, the Parties needed to address numerous geological and public concerns as a result of CGO installing the Improvements;
- C. **WHEREAS**, before the PUBLIC UTILITIES COMMISSION OF OHIO, OHIO POWER SITING BOARD (CASE № 11-3534-GA-BTX) will grant CGO a CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED, CGO must enter into a binding Agreement with the City to establish the material, means, and methods that CGO will utilize to restore the Property after the Improvements’ initial construction and all of CGO’S subsequent entries onto the Property to maintain, operate, control, reconstruct, fix, or remove the Improvements;
- D. **WHEREAS**, in conjunction with the PUBLIC UTILITIES COMMISSION OF OHIO, OHIO POWER SITING BOARD, the Parties intend for this Agreement to serve as the basis for all of CGO’S future restoration efforts of the Property;
- E. **WHEREAS**, the Parties intend for this Agreement to be attached as Exhibit “B” to a (1) RIGHT-OF-ENTRY, (2) QUITCLAIM DEED OF SUBSURFACE EASEMENT, (3) QUITCLAIM DEED OF EASEMENT, AND A (4) QUITCLAIM DEED OF TEMPORARY CONSTRUCTION EASEMENT; and

**NOW, THEREFORE**, for valuable consideration, including the mutual covenants and benefits stated in this Agreement, the CGO and the City agree as follows.

**1. GENERAL USE**

- 1.1. **RIGHT-OF-ENTRY.** CGO may use the Property to conduct archeological studies pursuant to the terms and conditions found in a Right-of-Entry to be granted to CGO.
- 1.2. **TEMPORARY CONSTRUCTION EASEMENT.** CGO may temporarily use no more than 1.345 acres of the Property for no longer than six (6) months to conduct the initial installation of CGO’S Improvements on the Property; however, further subject to the terms and conditions of the corresponding easement.
- 1.3. **PERPETUAL SUBSURFACE EASEMENT.** CGO may utilize subsurface portions of the Property to directional drill a tunnel under the Olentangy River and exiting from the drill bore pit on the Property; however, CGO shall not maintain any surface rights and further subject to the terms and conditions of the corresponding easement.

- 1.4. **PERPETUAL EASEMENT.** CGO may utilize a portion of the Property to trench cut the remainder of the Improvements to the Property's WEBER ROAD bike path entrance; however, further subject to the terms and conditions of the corresponding easement.
- 1.5. **PERMANENT GAS MARKERS.** CGO may construct, install, and maintain three (3) small lathe permanent gas markers within the Property. The placement of the first marker shall be near the WEBER ROAD bike path entrance into the Property, and the placement of the second marker shall be near the corner of the existing tree line just west of the north-south bike trail, and the third marker shall be near the bank of the Olentangy River. However, none of the markers shall be placed in a location that unreasonably hinders the usefulness of the Property.
- 1.6. **WARNING, HAZARD, AND DETOUR SIGNS.** Pursuant to the Improvements' initial construction, including detour signs for the closure of the Property's Weber Rd. connection to the east-west bike trail, and all subsequent entries, CGO shall submit plans for written approval from CRPD showing the type and location of appropriate signs giving the public notice at all entrances to the Property detailing the type and duration of the construction.
- 1.7. **COMO-PARK RECREATIONAL HILL.** CGO shall never possess the right to enter upon any portion of Como-Park's recreational hill.
- 1.8. **LEGAL COMPLIANCE.** Pursuant to any entry upon the Property and for any reason, CGO shall conduct all activity with regard to its Improvements and subsequent restoration of the Property in strict compliance with all applicable federal, state, and local laws and regulation.
- 1.9. **Construction Schedule.** Upon commencement of construction, CGO shall diligently prosecute to completion the Improvements in the easement areas, so as to minimize the duration of any activities and impacts on the Property, including reopening of the east-west bike trail. It is estimated that the construction of the Improvements on the Property should be completed within two (2) months of the start of construction.
2. **SPECIFIC USE, IMPACT, & RESTORATION.** In addition to abiding by the terms and conditions of the corresponding easements or right-of-entry, CGO shall restore the Property in accordance with the following:
  - 2.1. **VEGETATION**
    - 2.1.1. **DEFINITION.** Vegetation is defined as any trees, brush, or sod.
    - 2.1.2. CGO shall not impact any trees in the Property during the Improvements' initial construction other than the Property's three (3) trees contemplated between the Parties. Using the most commercially reasonable method, CGO shall transplant three (3) trees to an area reasonably located to their current position on the Property so as to not affect CGO'S completed Improvements. Except for these three (3) trees, no trees shall be cut, trimmed, or otherwise negatively impacted by the initial construction of the Improvements or any subsequent access pursuant to any easements.
    - 2.1.3. CGO shall take all reasonable precautions to avoid damage of any kind, directly or indirectly, to any of the Property's Vegetation before, during, or after the Improvements' construction; however, should CGI, directly or indirectly, damage any Vegetation in the Property at anytime before, during, or after the Improvements' construction, then CGI shall mitigate the Vegetation damage per CRPD'S direction, specification, and satisfaction. CGO shall only ever use native plant material suitable for floodplain planting to restore the Property. CGO shall

submit to CRPD a list of the intended native plant material, which CGO shall receive approval and authorization from CRPD prior to the use of the native plant material, which shall not be unreasonably withheld.

- 2.1.4. **INVASIVE SPECIES.** CGO shall treat and remove the presence of the invasive honey suckle and grapevine in any easement areas as reasonably required, but at a minimum of once every calendar year.

2.2. **OLENTANGY RIVER**

- 2.2.1. CGO represents to the best of CGO’s knowledge, after due inquiry, that CGO’s completed Improvement, and all future work, control, maintenance, monitoring activities, reconstruction, and removal associated with the Improvements, will not adversely affect, in any manner, the water supply, water quality, grade of the riverbank, or natural flow of the OLENTANGY RIVER.
- 2.2.2. Pursuant to any easement or entry rights onto the Property, CGO represents that it shall take all reasonable precautions to avoid impacting, in any manner, directly or indirectly, the Olentangy River before, during, or after the Improvements’ construction.
- 2.2.3. Specifically, CGO shall restore the area within, around, under, or over the Olentangy River by only using native plant material and stream stabilization techniques. CGO understands and agrees that riprap stabilization is not acceptable. However, should CGO, directly or indirectly, impact any aspect of the OLENTANGY RIVER, then CGO shall mitigate the impact to the OLENTANGY RIVER per written directions from the City and the PUBLIC UTILITIES COMMISSION OF OHIO.

2.3. **EAST-WEST & NORTH-SOUTH BIKE PATHS**

- 2.3.1. CGO shall not close any portion of the north-south bike path at any time.
- 2.3.2. Only to the extent of any easement rights granted to CGO over the Property, may CGO close portions of the east-west bike path and WEBER ROAD entrance during the initial installation of the Improvements. In the event CGO causes damage to any portion of the east-west bike path, CGO shall, as soon as reasonably possible, reconstruct the bike path using the same materials as existed prior to said damage, thereby putting the bike path into as good of condition if not better then it previously existed.
  - 1) As required under Section 1.6 above-herein, CGO shall post signs at all entrances to the Property explaining the closure of the east-west bike path and alternative routes the public may utilize.
- 2.3.3. CGO shall have no right to close any portion of the Property’s bike paths after the initial installation of the Improvements, without the prior written approval of CRPD.
- 2.3.4. CGO shall take all reasonable precautions to avoid impacting, in any manner, directly or indirectly, the Property’s bike paths before, during, or after the Improvements’ construction, except for as contemplated herein.

## **2.4. VERNAL POOLS AND WETLANDS**

- 2.4.1. CGO shall not, in any manner, directly or indirectly, affect any portions of the Property's vernal pools or wetlands.
- 2.4.2. CGO shall take all reasonable precautions to avoid impacting, in any manner, directly or indirectly, the Property's vernal pools and wetlands before, during, or after the Improvements' construction; however, should CGO, directly or indirectly, impact any aspect of the Property's vernal pools or wetlands, CGO shall immediately notify CRPD to mitigate the negative impacts to any vernal pools or wetlands. Notwithstanding, nothing contained herein or in any easements shall grant CGO the right to negatively impact any vernal pools or wetlands.

## **2.5. UTILITY LINES**

- 2.5.1. CGO shall not, in any manner, directly or indirectly, affect any portions of existing utility lines located on the Property.
- 2.5.2. CGO shall obtain all permits, approvals, and authorizations from any utility or public agency, including the DEPARTMENT OF PUBLIC UTILITIES for the City, and take all reasonable precautions to avoid impacting, in any manner, directly or indirectly, the Property's existing utility lines before, during, or after the Improvements' construction.

## **2.6. STAGING AREA**

- 2.6.1. CGO is permitted to use the Staging Area pursuant to the terms and conditions of a TEMPORARY CONSTRUCTION EASEMENT.
- 2.6.2. By no later than DECEMBER 31<sup>ST</sup>, 2012, CGO shall reasonably restore the land of the Staging Area to its existing condition or better, prior to CGO'S entry.
- 2.6.3. Restoration of the Staging Area shall be consistent with the terms of restoration for Vegetation, Bike Paths, Vernal Pools, Wetlands, Olentangy River, and Utility Lines.
- 2.6.4. CGO'S restoration shall also include (1) removal of all gravel and other material incidental to the Improvements' construction; (2) aeration of all turf area; (3) returning the Property to existing grade; and (4) establishing a seed bed of four (4") inches of topsoil to ensure that sod can be mowed in the future.
  - 1) Seeding of the Property shall be between APRIL 15<sup>TH</sup>, 2012 to JUNE 15<sup>TH</sup>, 2012, and AUGUST 15<sup>TH</sup>, 2012, to OCTOBER 15<sup>TH</sup>, 2012. If CGO'S restoration of sod does not reestablish, CGO shall reseed as necessary to restore the Property and guarantee there will be established turf in all areas disturbed on the Property. The foregoing is not intended to create a perpetual guarantee obligation on CGO, but rather to the extent any area of the Property does not reestablish consistent with the condition of the rest of the Property, CGO shall take all reasonable steps to ensure the City's Property is in as good of condition, if not better condition, then before the construction of the Improvements.
  - 2) CGO shall use low grow fescues, which is the seed and type and specification commonly utilized by CRPD.

- 2.7. **SURFACE SETTling, DIPPING, & EROSION.** CGO represents that the installation of its Improvements shall not cause surface settling or dipping or affect the naturally occurring condition on the Property. However, if at anytime the Improvements cause ground settling or dipping or erosion, CGO shall restore the Property to its original surface level and naturally occurring condition.
- 2.8. **RESTORATION CONFORMATION & CLARIFICATION.** CGO shall contact the City and receive written instructions from the City's Departments of Public Utilities and Recreation and Parks, anytime CGO needs clarification with how to properly conform to the restoration terms of this Agreement.
- 2.9. **CONTINGENCY.** All of CGO'S property rights in, on, under, over, upon, and through any portion of the Property are contingent upon CGO adhering to the terms of this Agreement. CGO'S failure to abide by the terms of this Agreement may cause termination of CGO'S property rights and those rights may automatically revert back to the CITY OF COLUMBUS, OHIO. Prior to any termination resulting from Grantee's violation of this Agreement, Grantee shall be given thirty (30) days from the date of written notice of the violation to cure said violation.
- 2.10. **COMPENSATION FOR FUTURE CLOSURE.** CGO acknowledges the City conducts numerous neighborhood activities in Como-Park that may be impacted by CGO'S future maintenance or reconstruction activities, or both, within the Park. Accordingly, CGO shall schedule such future work so as to limit the impact to those activities, and CGO shall financially compensate the City for its actual loss of use to Como-Park during any future work on the Property.
- 2.11. **EMERGENCY.** Under emergency circumstances, CGO may conduct all work necessary on the Property to secure the Improvements and protect the public from harm; however, as soon as possible, CGO shall obtain all necessary approvals from the City and PUCO, and CGO shall mitigate and restore the Property pursuant to this Agreement.
- 2.12. **SATISFACTION.** Pursuant to the Improvements' initial construction and all future entry onto the Property, all of CGO'S mitigation and restoration efforts under this Agreement shall be performed to the satisfaction of the City.
3. **INDEMNIFICATION AND HOLD HARMLESS.** Except for those claims, damages, losses, suits and actions that arise or result from Grantor's sole negligence or intentional misconduct, CGO shall indemnify and hold the City harmless from and against, and the City shall be entitled to recover against OWNER, all expenses, losses, costs, deficiencies, liabilities, and damages including, without limitation, all incurred reasonable legal fees and expenses arising out of or resulting from (i) any breach of a representation or warranty made by CGO in this Agreement, (ii) any breach of any other covenants or agreements made by CGO in or pursuant to this Agreement, or (iii) actions brought by third parties against the City for damages, injuries, or death of persons occurring on the Property due to CGO'S Improvements.
4. **SUCCESSORS AND ASSIGNS.** This Agreement and the matters contained in this Agreement shall inure to the benefit and be binding upon the respective successors and assigns of the Parties.

5. **NOTICES.** All notices, which are required for either party to serve upon the other, shall be effectively served if personally delivered or sent by certified mail, return receipt requested, and addressed as follows:

IF TO CITY:

CITY OF COLUMBUS, OHIO  
DEPARTMENT OF RECREATION AND PARKS  
1111 E. BROAD ST, COLUMBUS, OH 43205

&

CITY OF COLUMBUS, OHIO  
DEPARTMENT OF PUBLIC UTILITIES  
910 DUBLIN RD, COLUMBUS, OH 43215

WITH A COPY TO:

REAL ESTATE DIVISION  
109 NORTH FRONT STREET, 4<sup>TH</sup> FLOOR, COLUMBUS, OHIO 43215  
ATTENTION: CHIEF REAL ESTATE ATTORNEY

IF TO CGO:

COLUMBIA GAS OF OHIO, INC.  
ATTENTION: SURVEY AND LAND  
1600 DUBLIN RD, COLUMBUS, OH 43215

WITH A COPY TO  
COLUMBIA GAS OF OHIO, INC.  
Attention: Legal Council  
200 Civic Center Drive, Columbus, OH 43215

\*Either party may, with timely written notice given to the other party, specify a new address that further notice shall be sent.

6. **GOVERNING LAW, JURISDICTION:** This Agreement shall be construed and enforced in accordance with the laws of the STATE OF OHIO. All claims, counterclaims, disputes and other matters in question between the Parties arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the COUNTY OF FRANKLIN, STATE OF OHIO.
7. **REMEDIES CUMULATIVE.** All rights and remedies of the Parties enumerated in this Agreement shall be cumulative, and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity and the rights or remedies may be exercised and enforced concurrently.
8. **WAIVER.** No waiver of any covenant or condition or the breach of any covenant or condition of this Agreement shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the non-observance of any other occurrence of a breach or of any other covenant or condition of this Agreement.
9. **HEADINGS.** The captions and headings contained in the Agreement are included only for convenience of reference and do not define, limit, explain, or modify this Agreement or its interpretation, construction, or meaning, and the captions and headings are in no way to be construed as part of this Agreement.

10. **SEVERABILITY.** If any provision of this Agreement or the application of any provision to any person or to any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, which all other provisions shall remain in full force and effect, and it is the Parties' intent that if any provision of the Agreement is susceptible of two or more constructions, one that would render the provision enforceable and the other or others that would render the provision unenforceable, then the provision shall possess the meaning that renders it enforceable.
11. **NUMBER AND GENDER.** When used in this Agreement, the singular number and neuter gender of each personal pronoun shall be construed to mean such number and gender as the context, circumstances or its antecedent may require.
12. **ENTIRE AGREEMENT.** Except as provided in the easement or right-of-entry that this Agreement attaches itself, this Agreement constitutes the entire agreement between the City and CGO with respect to this Agreement's subject matter, and this Agreement supersedes all prior and contemporaneous agreements between the City and CGO in connection with this Agreement's subject matter. No officer, employee, or other servant or agent of the City or CGO is authorized to make any representation, warranty, or other promise not contained in this Agreement. No change, termination, or attempted waiver of any of the provisions of this Agreement shall be binding upon the City or CGO unless in writing and signed by the appropriate authorities of the affected party.
13. **RELATIONSHIP OF PARTIES:** Parties understand and agree that no provision or any acts or representation by either party contained in this Agreement shall be deemed to create any relationship other than the relationship of grantor and grantee. Nothing contained in this Agreement shall be deemed or construed by either the City or CGO, nor by any third party, as creating any type of agency, partnership, or joint venture relationship between the Parties.
14. **TIME OF ESSENCE.** Parties agree that *time is of the essence* as to all provisions of this Agreement.
15. **GOOD FAITH AND COOPERATION.** Parties shall execute and apply good faith and cooperation to all terms and conditions contained in this Agreement.
16. **AUTHORITY TO BIND.** The signatories of this Agreement represent and affirm that they have the authority to bind themselves and their respective party to this Agreement.

**\*\*\*SIGNATURES BEGIN ON NEXT PAGE\*\*\***

**APPROVED:**

IN WITNESS WHEREOF, COLUMBIA GAS OF OHIO, INC., an Ohio corporation, by its duly authorized corporate officer, voluntarily caused the execution of this instrument on \_\_\_\_\_, 2012.

**COLUMBIA GAS OF OHIO, INC.,**  
AN OHIO CORPORATION

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OHIO )  
COUNTY OF FRANKLIN ) SS:

BE IT REMEMBERED that on \_\_\_\_\_, 2012, this instrument was voluntarily acknowledged before me by \_\_\_\_\_, on behalf of COLUMBIA GAS OF OHIO, INC., an Ohio corporation.

(SEAL) \_\_\_\_\_  
NOTARY PUBLIC

**APPROVED:**

IN WITNESS WHEREOF, Grantor, CITY OF COLUMBUS, OHIO, by ALAN D. MCKNIGHT, DIRECTOR, DEPARTMENT OF RECREATION AND PARKS, as authorized by COLUMBUS CITY COUNCIL ORDINANCE № \_\_\_\_\_, voluntarily caused the execution of this instrument on \_\_\_\_\_, 2012.

**CITY OF COLUMBUS, OHIO,**  
A MUNICIPAL CORPORATION

\_\_\_\_\_  
ALAN D. MCKNIGHT, DIRECTOR  
DEPARTMENT OF RECREATION AND PARKS

STATE OF OHIO )  
COUNTY OF FRANKLIN ) SS:

BE IT REMEMBERED that on \_\_\_\_\_, 2012, this instrument was voluntarily acknowledged before me on behalf of the CITY OF COLUMBUS, OHIO, by ALAN D. MCKNIGHT, DIRECTOR, DEPARTMENT OF RECREATION AND PARKS.

(SEAL) \_\_\_\_\_  
NOTARY PUBLIC



**APPROVED:**

IN WITNESS WHEREOF, Grantor, CITY OF COLUMBUS, OHIO, by GREG J. DAVIES, DIRECTOR, DEPARTMENT OF PUBLIC UTILITIES, as authorized by COLUMBUS CITY COUNCIL ORDINANCE No \_\_\_\_\_, voluntarily caused the execution of this instrument on \_\_\_\_\_, 2012.

**CITY OF COLUMBUS, OHIO,**  
A MUNICIPAL CORPORATION

\_\_\_\_\_  
GREG J. DAVIES, DIRECTOR  
DEPARTMENT OF PUBLIC UTILITIES

STATE OF OHIO                    )  
COUNTY OF FRANKLIN    ) SS:

**BE IT REMEMBERED** that on \_\_\_\_\_, 2012, this instrument was voluntarily acknowledged before me on behalf of the CITY OF COLUMBUS, OHIO, by GREG J. DAVIES, DIRECTOR, DEPARTMENT OF PUBLIC UTILITIES.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
**THIS INSTRUMENT PREPARED BY: (3/1/2012) REV. 3.26.12**  
**COLUMBUS CITY ATTORNEY, REAL ESTATE DIVISION**  
**BY: USAMAH ABDULLAH, ASSISTANT CITY ATTORNEY**  
**FOR: RECREATION AND PARKS (TINA MOHN)**  
**RE: CLINTONVILLE COMO PARK – COLUMBIA GAS EASEMENT**