

**CONTRIBUTION AGREEMENT
BETWEEN
THE OHIO ENVIRONMENTAL PROTECTION AGENCY
AND
THE CITY OF COLUMBUS**

This Contribution Agreement (“Agreement”) is entered into this ____ day of _____, 2017, by and between the OHIO ENVIRONMENTAL PROTECTION AGENCY (“Ohio EPA”), represented by the Director of Environmental Protection (“Director”), and the CITY OF COLUMBUS (“City”), represented by the Department of Public Utilities, (individually a “Party” and collectively, the “Parties”) and their respective contractors, agents, successors and assigns.

WHEREAS, the Ohio EPA expects to perform remediation activities at the former American Smelting and Refining Company (ASARCO) facility property adjacent to the north side of Windsor Avenue, to mitigate contamination migration from the property, as well as removing contaminated sediment from a downstream section of American Ditch; and

WHEREAS, replacing and upgrading the Windsor Avenue storm sewer in conjunction with the remediation activities will help ensure that contaminant migration from the property to the storm sewer (and ultimately to American Ditch) via shallow ground water infiltration will be eliminated to the extent possible; and

WHEREAS, in furtherance of this joint effort, Ohio EPA and city of Columbus have agreed that Ohio EPA will provide funds to assist with the costs of replacing and upgrading a 1200-foot section of Windsor Avenue storm sewer that extends approximately 400 feet to approximately 1600 feet west of the intersection of Windsor Avenue and Joyce Avenue; and

WHEREAS, Ohio EPA and the City are undertaking this effort to replace and upgrade this sewer because it is currently in very poor condition and to eliminate to the extent possible the possibility the sewer is acting as a conduit for ground water contaminated with cadmium and zinc to enter American Ditch, a tributary of Alum Creek; and

WHEREAS, Ohio EPA administers the laws of Ohio relating to air and water quality, hazardous, solid and infectious wastes, hazardous substances, construction and demolition debris, sewage, industrial and other wastes, and the protection of human health and the environment, ORC Chapters 3704, 3714, 3734, 3745, 3746, 3750, 3751,

3752, 3753, 6109 and 6111, and rules promulgated thereunder, and the Director is authorized to enter into this Agreement pursuant to ORC § 3745.01; and NOW THEREFORE, in consideration of the above recitals and the mutual covenants and undertakings set forth herein, the Parties agree as follows:

ARTICLE I - SCOPE

Section 1.1 This Agreement provides the terms and conditions governing payment by the Ohio EPA of One Hundred Thousand Dollars (\$100,000.00) to the City to pay a portion of the costs expected to be incurred by the City in replacing and upgrading the storm sewer along Windsor Avenue.

ARTICLE II – RESPONSIBILITIES OF THE PARTIES, PAYMENT AND TIMING

Section 2.1 Responsibilities of the City

In furtherance of this agreement, the City will replace and upgrade an approximately 1,200-foot section of the Windsor Avenue storm sewer. This storm sewer extends from approximately 400 feet to approximately 1,600 feet west of the intersection of Windsor Avenue and Joyce Avenue. The storm sewer will be replaced with sanitary grade pipe to help eliminate ground water infiltration in the storm sewer. The City shall also install trench dams alongside and adjacent to the storm sewer to help control potential contaminated ground water flow in fill along the storm sewer.

Impacted soil has been identified above the storm sewer that likely originated from the ASARCO facility. Ohio EPA sampled the soil and identified impacted areas. Ohio EPA will clearly mark the impacted areas. As the City excavates the trench to replace the storm sewer, the City will separate impacted soil excavated from areas identified by Ohio EPA. As directed by Ohio EPA, the City shall either direct-load the impacted soil into trucks or roll-off boxes provided by an Ohio EPA contractor or stockpile the impacted soil at a location directed by Ohio EPA. Ohio EPA will be responsible for the costs of transport and disposal of the impacted soil.

Section 2.2 Responsibilities of the Ohio EPA

In furtherance of this agreement, the Ohio EPA will pay to the City the amount outlined in Section 2.3 of this agreement to assist with the cost of the storm sewer upgrades outlined in Section 2.1 of this agreement. In addition, the Ohio EPA will provide technical and logistical assistance as necessary for the impacted soil removal work identified in Section 2.1, and will be responsible for transport and disposal of the impacted soil from the former ASARCO facility that has been identified by Ohio EPA sampling as outlined in Section 2.1.

Section 2.3 Payment

Upon execution of this Agreement by the Parties, Ohio EPA will pay the total sum of One Hundred Thousand Dollars (\$100,000.00) to the City, to be used to assist with paying the costs of the Windsor Avenue storm sewer upgrade. The City is authorized and directed to use these funds from the Ohio EPA to pay for costs related to this storm sewer upgrade, as outlined in this Agreement.

Section 2.4 Timing

The Ohio EPA is currently planning to begin remediation activities at the former ASARCO property in June 2017. The City is currently planning to begin construction of the upgrade to the Windsor Avenue storm sewer in April 2018.

ARTICLE III - TERM

Section 3.1 Effective Date

This Agreement shall be effective upon execution of this Agreement by all Parties.

Section 3.2 Termination

This Agreement shall terminate or expire in accordance with the provisions of Article X of this Agreement.

Section 3.1 Extension

The term of this Agreement may not be extended except upon written agreement by all Parties to this Agreement.

ARTICLE IV - STATE FUNDING

Section 4.1 Nothing in this Agreement shall constitute, or be deemed to constitute, an obligation of future appropriations by the General Assembly of the State of Ohio. The State of Ohio's financial commitment to the Project shall not exceed the Ohio EPA Contribution to the Property Account.

ARTICLE V - COMMUNICATIONS

Section 5.1 Notices

All notices, requests, demands and other communications hereunder shall be in writing

and shall be hand-delivered, mailed first class, postage pre-paid, or mailed certified or registered mail, postage pre-paid, as follows:

(i) If to Ohio EPA:

Ohio EPA, Division of Environmental Response and Revitalization
Attn: Steven Snyder, Fiscal Officer
Lazarus Government Center
50 West Town Street, P.O. Box 1049
Columbus, Ohio 43216-1049

and

Ohio EPA
Attn: Douglas Crandall, Site Coordinator
Central District Office
Lazarus Government Center
50 West Town Street, P.O. Box 1049
Columbus, Ohio 43216-1049

(ii) If to the City:

City of Columbus, Department of Public Utilities
Attn: Jonathan Lee, Assistant Director
Fiscal Office
910 Dublin Road
Columbus, Ohio 43215

and

City of Columbus, Division of Sewerage and Drainage
Attn: Jeff Cox, Project Coordinator
Stormwater and Regulatory Management Section
1250 Fairwood Avenue
Columbus, Ohio 43206

All notices, requests or other communications shall be effective as of the date when actually received by the Party to whom such notice, request or other communication is addressed. A Party may change the person to whom and/or the address at which notices, requests, or other communications may be delivered to it by providing written notice of such new person and/or such new address to the other Parties.

Section 5.2 Points of Contact

Ohio EPA's general points of contact for administration of this Agreement and communications concerning fiscal issues and activities under this Agreement shall be: Douglas Crandall, Ohio EPA, Central District Office, Lazarus Government Center, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049; and Steven Snyder, Fiscal Officer, Division of Environmental Response and Revitalization, Ohio EPA, Lazarus Government Center, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049.

The City's general point of contact for administration of this Agreement and communications concerning fiscal issues under this Agreement shall be: Jeff Cox, City of Columbus, Division of Sewerage and Drainage, 1250 Fairwood Avenue, Columbus, Ohio 43206; and Jonathan Lee, Assistant Director, City of Columbus, Department of Public Utilities, 910 Dublin Road, Columbus, Ohio 43215.

ARTICLE VI - DISPUTE RESOLUTION

Section 6.1 Duty to Negotiate

As a condition precedent to a Party bringing any formal proceeding concerning this Agreement, that Party must first notify the other Party in writing of the dispute and seek in good faith to resolve the dispute through negotiation. The procedures of this Article shall apply to any dispute arising under this Agreement, or any activity, action, function, decision or responsibility referenced in this Agreement. Following the occurrence of circumstances giving rise to a dispute, the Parties shall make reasonable efforts to informally resolve the dispute. If resolution cannot be achieved informally within thirty (30) days, a Party may elevate the dispute for formal resolution pursuant to Section 6.2 of this Article.

Section 6.2 Procedure

Within thirty (30) days following the occurrence of circumstances giving rise to a dispute and the failure of the Parties to informally resolve the dispute, a Party may initiate formal dispute resolution. To initiate formal dispute resolution, a Party shall submit to the other Party a written notification of the dispute. The written notification of the dispute shall specify: (i) the nature of the dispute; (ii) the activity, action, function, decision or responsibility affected by the dispute; (iii) the disputing Party's position with respect to the dispute; and (iv) the information the disputing Party is relying on to support its position.

Within fifteen (15) days of written notification of a dispute, the points of contact and designated representatives of the Parties shall meet and attempt to resolve the dispute.

If the points of contact and designated representatives of the Parties are unable to resolve the dispute within fifteen (15) days of receipt of the written notification of dispute, either Party may submit a written statement of the dispute to the signatories of this Agreement (or their successors in office). Within thirty (30) days of submittal of the written statement of dispute, or as practicable thereafter, the signatories of this Agreement (or their successors in office) or their designees shall meet in order to resolve the dispute.

The Parties may agree to suspend the activity, action, function, decision or responsibility affected by the circumstances that gave rise to the dispute until the dispute is resolved. This dispute resolution process may be used to resolve site-specific disputes, provided this dispute resolution process does not conflict with a dispute resolution process specified in an administrative order, judicial consent decree or other legally binding document governing activities in relation to the Project.

The final resolution of any dispute elevated for formal resolution pursuant to this Section 6.2 of this Article shall be memorialized in writing and acknowledged by the signatures of the points of contact for each Party. The Parties shall incorporate and implement such resolution as part of the activity, action, function, decision or responsibility affected by the circumstances that gave rise to the dispute.

Section 6.3 Right to Pursue Remedies

In the event that the dispute is not resolved upon completion of these dispute resolution procedures, the Parties reserve the right to bring an action in a court of competent jurisdiction and to seek legal or equitable relief as may be appropriate.

ARTICLE VII - MODIFICATION

Section 7.1 The terms of this Agreement may be modified at any time by mutual agreement of the Parties. If a Party requests the Agreement to be modified but the other Party does not concur, a Party may invoke the dispute resolution process set forth in Article VI of this Agreement. If no resolution is reached within forty-five (45) days after the matter is referred to the signatories of this Agreement (or their successors in office) or such other period as the Parties may agree, the Agreement shall not be modified.

ARTICLE VIII - RELATIONSHIP OF PARTIES

Section 8.1 No Agency, Partnership or Joint Venture

In the exercise of their respective rights and the fulfillment of their respective obligations under this Agreement, the Parties each act in an independent capacity, and are not to be considered the officer, agent, or employee of the other Parties, nor shall this Agreement create a partnership or joint venture between any of the Parties hereto.

Section 8.2 No Waiver

Nothing in this Agreement shall affect the authority of Ohio EPA to carry out its statutory and regulatory responsibilities or to exercise its authorities under Federal and State law. Nothing in this Agreement relieves or alters any responsibility, commitment, or duty of the Parties under any administrative or judicial order, or in any way limits or restricts any right or authority of the Parties to enforce any such order.

In the exercise of their respective rights and obligations under this Agreement, a Party shall not, without the consent of the other Party, provide any contractor with a release that waives or purports to waive any rights such other Party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other Party may have or for violation of any law.

ARTICLE IX - GENERAL PROVISIONS

Section 9.1 Entire Agreement

This Agreement establishes the rights, duties, and obligations of the Parties. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof.

Section 9.2 Change

No change, termination, or attempted waiver of any of the provisions of this Agreement shall be binding upon the Parties unless in writing and signed by all Parties. No waiver of any breach or violation of any part of this Agreement shall be deemed to be a waiver of any future breach or violation of this Agreement.

Section 9.3 Non-Assignability

All of the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns; provided, however, that none of the Parties may assign any of their respective rights or obligations hereunder without the prior written consent of the other Party. No assignment, if any, shall operate to release a Party from its liability for the performance of its obligations under this Agreement.

Section 9.4 Governing Law

This Agreement and any claims arising under this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement that may be determined by a court of competent jurisdiction to be prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or performance hereunder shall be brought only in the courts of the State of Ohio, and the Parties hereby irrevocably consent to such jurisdiction. In the event that any provision of this Agreement is determined by a court of competent jurisdiction to conflict with any applicable federal, state, or local law or regulation, the applicable law or regulation shall control.

Section 9.5 Compliance with Law

In the performance of its responsibilities under this Agreement, the City agrees to comply with all applicable federal, state and local laws, whether or not specifically referenced herein.

Section 9.6 Severability

A determination by a court of competent jurisdiction that any part of this Agreement is invalid shall not invalidate or impair the force or effect of any other part hereof, except to the extent that such other part is wholly dependent for its operation on the part so declared invalid.

Section 9.7 Supersedence

This Agreement supersedes all other agreements, oral or written, between the Parties with respect to the subject matter hereof, and may not be modified or extended except by an agreement in writing signed by all Parties hereto, provided that any such modification shall comply with and be subject to any statutory or regulatory requirements or restrictions placed upon Ohio EPA's authority to enter into agreements.

ARTICLE X - TERMINATION, EXPIRATION

Section 10.1 Termination

This Agreement may be terminated only upon written agreement of the Parties or otherwise in accordance with applicable law. Any Party that desires to terminate this Agreement shall provide written notice, signed by such Party's signatory to this Agreement or their successor in office. Upon receiving such notice, a Party may invoke the dispute resolution process set forth in Article VII of this Agreement.

Section 10.2 Expiration

Unless terminated at an earlier date by the Parties, or otherwise extended by the Parties, this Agreement shall expire upon expenditure by the City of the entirety of Ohio EPA's Contribution and the completion of the replacement of the Windsor Avenue sewer, or five (5) years after the effective date of this Agreement, whichever occurs first.

IN WITNESS WHEREOF, this Agreement is executed and effective as of the date first written above.

OHIO ENVIRONMENTAL PROTECTION AGENCY

BY: _____
Craig Butler, Director

DATE: _____

CITY OF COLUMBUS, DEPARTMENT OF PUBLIC UTILITIES

BY: _____
Tracie Davies, Director of Public Utilities

DATE: _____