***FEBRUARY 2025 TEMPLATE***

This document is the revised final template but is subject to further change.

This template is for use in drafting Operation and Maintenance Agreements for properties under Ohio’s Voluntary Action Program **[[1]](#footnote-1)**

**OPERATION AND MAINTENANCE AGREEMENT**

**Between Ohio EPA and *[Name of Volunteer]***

**Regarding the *[Name of Property]* Property,**

***[Name of County]* County, Ohio**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Operation and Maintenance Agreement (“Agreement”) is entered into by the Director of the Ohio Environmental Protection Agency (“Director”) and *[Name of Volunteer]* (“*[Name]*” or “Volunteer”), pursuant to Ohio Revised Code (“ORC”) Chapter 3746 and Ohio Administrative Code (“OAC”) Chapter 3745-300, known as the Ohio Voluntary Action Program. In consideration of the mutual covenants and subject to the terms and conditions of this Agreement, the parties agree as follows:

**1.** **NFA Letter / Property.** A no further action letter (NFA Letter No. \_\_\_\_\_\_\_\_ (“NFA Letter”) under the Voluntary Action Program (“VAP”), was submitted to the Director on behalf of *[Name]* on *[Date]*, by *[Name of CP]*, a certified professional (Certified Professional No. \_\_\_\_). The NFA Letter addresses approximately \_\_\_\_\_ acres of real property located at *[Address]*, *[City]*, *[Name of County]* County, Ohio ( “Property”). The legal description of the Property [*select an option:* is contained in the NFA Letter / is attached hereto as Attachment 1,] and is incorporated into this Agreement by reference.

**2.** **O&M Plan / Modifications / Public Records Availability.** The NFA Letter includes an Operation and Maintenance Plan (“O&M Plan”). The term O&M Plan refers to the plan dated *[Date]* that applies to the Property as described by the O&M Plan. The O&M Plan is attached hereto as Attachment 2 and is incorporated into this Agreement by reference. Likewise, modifications approved (see Modifications Section of this Agreement) are incorporated into this Agreement by reference. The NFA Letter, O&M Plan, and any modification, are available for review as a public record for the Property, and a copy may be obtained by contacting Ohio EPA’s [*name*] District Office, at [*address and phone*] or by searching Ohio EPA’s e-documents portal at https://edocpub.epa.ohio.gov/publicportal/edochome.aspx.

**3. Agreement Requirement.** This Agreement is required pursuant to ORC 3746.10(C)(2) or 3746.12(A)(2) and OAC 3745-300-11.

**4. Remedy for the Property.** The remedy for the Property involves the following components: *[Summarize the remedial activities that were conducted for the Property, i.e., soil excavation, risk mitigation plans and activity and use limitations, as well as the remedial activities that are subject to the O&M Plan; e.g. engineering controls, ground water treatment, and vapor pathway monitoring remedies. Delete any non-applicable items]*:

**a.** **Remedies Performed**. Remedies performed to-date include [e.g., soil excavation / ground water treatment / sediment remediation / asbestos abatement / installation of sub slab depressurization system (“vapor mitigation system”)], which are documented by the NFA Letter.

**[b. Risk Mitigation Measures.** A Risk Mitigation Plan (“RMP”) was prepared to detail the risk mitigation measures to be implemented during construction/excavation activities at the Property. Like the NFA Letter, the RMP is available for review as a public record.]

**c. Activity and Use Limitations.** Activity and use limitations are included in a proposed Environmental Covenant developed pursuant to ORC 5301.80 to 5301.92 and OAC 3745-300-11. Following the issuance of a covenant not to sue for the Property, the Environmental Covenant will be recorded pursuant to ORC 3746.14 as a deed record for the Property.

**d.** **Engineering Controls.** The Property relies on engineering controls to comply with applicable standards, as further specified and described in the O&M Plan.

**[e.** **Interim Measures.** Interim measures relied upon, as provided in the O&M Plan, include: [*list or summarize the interim measures*].]

**[f.** **Ground Water Remedy.** Ground water underlying the Property will continue to undergo monitoring [*include the purpose of ground water remedy, i.e.,* to demonstrate whether the Property is meeting applicable standards based on the treatment conducted], as described in the O&M Plan.]

**[g. Vapor Pathway Monitoring.** Monitoring of soil gas and indoor air will continue to evaluate [*edit as appropriate:* the need for any vapor pathway mitigation / effectiveness of installed vapor mitigation systems or engineering controls at maintaining compliance with the applicable standards], as described in the O&M Plan.]

**[h. Future Remedial Activities.**  New engineering controls or remedial activities may occur pursuant to the activity and use limitations for the Property (e.g., building occupancy limitation – prior remedy or demonstration obligations) or with OAC 3745-300-11 allowable revision of current remedies. Such engineering controls shall be accounted for under a modification to the O&M Plan, consistent with the Modification Section of this Agreement.]

**5. [Engineering Controls / Ground Water Remedy / Vapor Pathway Monitoring / Interim Measures is/are] Subject to the O&M Plan.** The [engineering controls / ground water remedy / interim measures], as set forth in the O&M Plan for the Property, [is / are] part of the voluntary action remedy and must be implemented and maintained by *[Name]* in accordance with this Agreement and the O&M Plan. The remedial activities demonstrate that the Property will [maintain or achieve] compliance with applicable standards set forth in ORC Chapter 3746 and OAC Chapter 3745-300 and in the covenant not to sue issued pursuant to ORC 3746.12 for the Property (“Covenant Not to Sue”).

**6. Implementation of O&M Plan [*when applicable to ground water or vapor pathway remedies:* Verifying Compliance with Applicable Standards].** *[Name]* shall perform the [engineering controls / interim measures / ground water remedy / vapor pathway monitoring] in accordance with the O&M Plan, and perform all inspections, repairs, reporting, record keeping, demonstrations and other requirements in accordance with the O&M Plan. [Further, within \_\_\_ years of the effective date of this Agreement, *[Name]* shall submit to Ohio EPA verification that the Property has achieved compliance with the [surface water, ground water, sediments, indoor air and/or soil] standards applicable to the Property. Such verification shall be completed in accordance with the O&M Plan and OAC 3745-300-11, following the procedures required by the rule in effect when the verification is made.]

**7. Property Access.** *[Consider referencing or attaching a copy of the access agreement.]**[Name]* certifies that it has access to the Property sufficient to fully implement the O&M Plan and this Agreement [in cooperation with the current property owner]. Further, upon transfer of the Property or portion thereof, *[Name]* shall use best efforts to maintain such access.

**8. Recording of Agreement.** *[Name]* may record this Agreement as an exhibit to the Covenant Not to Sue but the recording of this Agreement is not required by ORC 3746.14.

**9. Effect of Violation of this Agreement.** Failure to implement or maintain any remedial activities (including engineering controls) under this Agreement or the O&M Plan or approved modification constitutes the failure to maintain an applicable standard in accordance with ORC 3746.12(B) and OAC Chapter 3745-300 and is subject to the process outlined in the Compliance Schedule Agreement Section of this Agreement. Failure to comply with this Agreement or approved modification or to implement or maintain any engineering control comprises noncompliance with this Agreement, which is subject to injunctive relief to correct the noncompliance.

**10. Financial Assurance.** *[Name]* shall ensure that reasonable and adequate funds in the amount of at least *[Amount]* Dollars ($*[Amount]*) are available to comply with this Agreement by providing financial assurance. For its financial assurance demonstration, *[Name]* has *[furnished / established / obtained / executed / funded]* a *[Name of financial assurance]* for $*[Amount]*, copy [attached hereto as Attachment *[#] –or-* submitted to Ohio EPA for the NFA Letter file]. *[Name]* agrees to [maintain / annually renew] the *[Name of financial assurance mechanism]* or execute and fund another comparable, acceptable form of financial assurance, and submit to Ohio EPA a copy of each [renewed *[Name of Financial Assurance]* or other] financial assurance. Upon request, [name] shall provide Ohio EPA with an updated demonstration of financial assurance. Examples of acceptable financial assurance include a trust fund, a surety bond guaranteeing payment into a trust fund, a surety bond guaranteeing performance of this Agreement and the O&M Plan, a letter of credit, an insurance policy, the obligated party’s financial assurance demonstration under VAP affidavit, an escrow account, or such other financial assurance as approved by Ohio EPA. In the event the amount or form of financial assurance provided herein is inadequate to comply with the terms of this Agreement, the Director may propose a modification of this paragraph pursuant to the Modification Section of this Agreement.

**11. Notice to Prospective Property Transferees of Remedy Obligations.** At least fourteen (14) days prior to the execution of any sales contract or other document transferring ownership of any portion of the Property that is subject to this Agreement, whichever comes later, *[Name]* shall provide written notice to the prospective Property transferee that the Property, or such portion of the Property, is subject to the Covenant Not to Sue and this Agreement.

**12. Notice to the Director of Transfer of Property.** Within fourteen (14) days after a sale or other transfer of any portion of the Property that is subject to this Agreement, *[Name]* shall provide written notice of the sale or to the Director that the Property. This notice shall be submitted to Ohio EPA and shall include:

**a.** The name, address, and telephone number of each new property owner, and the name, title, address, email address, and telephone number of the new owner’s contact person.

**b.** A survey plat and legal description of the Property or such portion of the Property that was transferred. In the case of a transfer of a portion of the Property, include also a survey plat that depicts the boundary of the transferred portion of the Property in relation to the Property subject to this Agreement and the Covenant Not to Sue.

**c.** The closing date of the transfer of ownership of the Property or such portion of the Property.

**13. Option to Transfer this Agreement / Notice to Director.** Pursuant to ORC 3746.14(C), *[Name]* may transfer this Agreement to any other person (the “Transferee”) by assignment or in conjunction with the acquisition of title to the Property. Within fourteen (14) days after such transfer, *[Name]* shall provide written notice to the Director of the terms and conditions of the transfer of obligations of this Agreement and the O&M Plan (“Transfer Terms and Conditions”), by submitting:

**a.** The name, address, email address, and telephone number of the Transferee and the name, title, address, email address, and telephone number of the contact person for the Transferee;

**b.** A statement of the extent to which the Transferee has assumed the obligations of this Agreement and the O&M Plan;

**c.** A copy of the legal instrument(s) that provide the Transfer Terms and Conditions; and

**d.** A copy of the Transferee’s proposed financial assurance that complies with the Financial Assurance Section of this Agreement, if the Transferee has assumed the financial assurance obligations of this Agreement and the O&M Plan. The Transferor’s financial assurance shall remain effective until Ohio EPA approves in writing the Transferee’s financial assurance and the Transferee’s financial assurance is fully executed and funded.

Upon the Director’s receipt of such notice of the Transfer Terms and Conditions in accordance with this Section of the Agreement, and Ohio EPA’s approval of the Transferee’s financial assurance, the Transferee shall be considered a party to this Agreement, in accordance with the Transfer Terms and Conditions.

**14. Subparceling.** Upon written notice submitted by *[Name]* to the Director, that one or more parcels of the Property have been divided or subparceled, this Agreement shall apply separately to each subdivided parcel subject to this Agreement upon the date of subdivision or the date of the submission of written notice, whichever occurs later. *[Name]* shall provide such written notice by submitting:

**a.** The legal description of the subdivided parcels;

**b.** A survey plat of the subdivided parcels;

**c.** The date of the subdivision;

**d.** A copy of the legal instrument(s) providing for the subdivision; and

**e.** The name(s) of the new owner, if any, of the subdivided parcels.

Upon the written notice submitted pursuant to this Section, this Agreement shall be deemed to be amended, without modification of this Agreement, to identify the subdivided parcels of the Property. The Covenant Not to Sue shall remain in effect for any subdivided portion of the Property that continues to comply with the requirements of this Agreement and the applicable standards that form the basis of the Covenant Not to Sue. Any revocation of the Covenant Not to Sue for any parcel shall not be based solely on a finding that any other subdivided parcel of the Property no longer complies with the applicable standards or the requirements of this Agreement.

**15. Document Submittals / Notifications to Parties.** All documents, including but not limited to notices and reports, required to be submitted electronically by *[Name]* pursuant to this Agreement shall be identified by NFA Letter number [\_\_\_NFA\_\_\_] and addressed to the following persons:

 For Ohio EPA:

Ohio EPA – Central Office

Division of Environmental Response and Revitalization

50 West Town Street

P.O. Box 1049

Columbus, OH 43216-1049

Attn: DERR Compliance Officer, *[Name of Property] (NFA number)*

[records@epa.ohio.gov](http://epaintra.epa.ohio.gov/portals/AppData/Local/Temp/10/records%40epa.ohio.gov)

For \_\_\_\_\_\_\_\_\_\_\_\_\_[*name of Volunteer/Owner; repeat entry as needed*]:

*[Name]*

*[Address]*

*[City, State, Zip]*

*Attn: [Name of Representative]*

*[Title]*

*[email address]*

and

*[Name]*

*[Address]*

*[City, State, Zip]*

*Attn: [Name of Representative]*

*[Title]*

*[email address]*

Any party may designate an alternative contact name or address upon written notification to any other party.

**16. Modification of this Agreement or O&M Plan.** This Agreement or the O&M Plan may be modified by agreement of the appropriate parties. Modifications of this Agreement shall be in writing, signed by the authorized representative of *[Name]* and by the Director, and shall be effective on the date signed by the Director. Modifications of the O&M Plan shall be submitted in writing to Ohio EPA, subject to approval by Ohio EPA, and effective upon written approval by Ohio EPA. Modifications to the plan or agreement shall include required updates to sampling, data evaluation, demonstration, and verification, as applicable, based on OAC 3745-300-11. Modifications may consist of a new O&M plan that replaces an O&M plan in its entirety or an O&M plan amendment. Ohio EPA reserves the right to require the submittal of a new NFA letter for a proposed modification that will result in the application of an applicable standard or land use different than that contained in the NFA Letter.

**17.** **Compliance Schedule Agreement.** Within thirty (30) days after the mailing of notice from the Director of a finding that the Property or a portion of the Property no longer complies with an applicable standard upon which the issuance of the Covenant Not to Sue (CNS) was based, *[Name]* shall notify the Director of its intention to return the Property or such portion of the Property to compliance with the applicable standards upon which the CNS was based (“cure”) and enter into a compliance schedule agreement with the Director for such cure, in accordance with ORC 3746.12(B).

**18. Compliance with Other Laws.** *[Name]* shall conduct all activities pursuant to this Agreement and the O&M Plan in compliance with all applicable local, state, and federal laws and regulations, including but not limited to requirements to obtain permits or authorizations. *[Name]* acknowledges that Ohio EPA’s review and approval of any health and safety measures is limited to ensuring compliance with the requirements of ORC Chapter 3746 and OAC Chapter 3745-300 and does not extend to determining compliance with the Occupational Safety and Health Act, the regulations adopted under that act, or any obligation imposed by the Occupational Safety and Health Administration.

**19. Inspections by Ohio EPA.** [*Name*] shall allow the Director or their authorized representatives to perform inspections to determine compliance with this Agreement, the O&M Plan, or any modifications. Such inspections shall be consistent with ORC Chapter 3746 and OAC Chapter 3745-300, including but not limited to the reasonableness of inspection timing and frequency in accordance with ORC 3746.21.

**20. Program Costs for Monitoring Compliance with this Agreement.** *[Name]* shall reimburse Ohio EPA for the actual direct and indirect costs incurred by Ohio EPA in monitoring compliance with this Agreement pursuant to OAC 3745-300-03.

**a.** Ohio EPA will periodically submit to *[Name]* an itemized statement of its monitoring costs for the previous year(s). Monitoring costs include, but are not limited to, costs for reviewing submissions or reports required by this Agreement, conducting Property inspections, and corresponding with [*Name*] or its representative.

**b.** Within thirty (30) days of receipt of such itemized statement, *[Name]* shall remit payment for all of Ohio EPA’s monitoring costs for the previous year(s). If *[Name]* disputes the accuracy of items on the itemized statement, a request for review of the statement may be made within thirty (30) days of receipt of the statement. After review, Ohio EPA will resubmit to *[Name]* an itemized statement with appropriate revisions. *[Name]* shall remit payment within fourteen (14) days of receipt of the resubmitted statement.

 **c.** Unless Ohio EPA provides notice in writing of an electronic or alternative method for remitting payments, *[Name]* shall remit payments to Ohio EPA pursuant to this Section of the Agreement as follows:

* + 1. Payment shall be made by an official (or certified) check made payable to “Treasurer, State of Ohio.” The check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049.
		2. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049.

**21. Termination.** This Agreement shall terminate upon (a) revocation or voidance of the Covenant Not to Sue, (b) a demonstration, in accordance with OAC 3745-300-11 and the O&M Plan, that implementation of this Agreement and the O&M Plan is no longer necessary for the Property to comply with applicable standards, upon written acknowledgment of the demonstration by the Manager of the VAP, or (c) otherwise upon the written approval of the Director of the Ohio EPA.

**22. Waiver.** *[Name]* agrees that the terms and conditions of this Agreement are lawful and reasonable, and agrees to comply with this Agreement. *[Name]* hereby waives *[its]* right to appeal the issuance of this Agreement and the terms and conditions of this Agreement, and hereby waives any and all rights *[it]* might have to seek judicial or administrative review of this Agreement either in law or equity. *[Name]* reserves *[its]* right to participate in any appeal by a third party to the Environmental Review Appeals Commission or to any court.

**23. Entire Agreement.** The terms and conditions of this Agreement, including the O&M Plan, constitute the entire agreement of the parties. No oral or written representation shall be binding unless approved as a modification of this Agreement pursuant to the Modification Section of this Agreement. The terms and conditions of this Agreement shall be interpreted consistent with ORC Chapter 3746 and OAC Chapter 3745-300.

**24. Authorized Signatories.** Each undersigned representative of a signatory to this Agreement represents that he or she is fully authorized to execute this Agreement and to legally bind such signatory to this Agreement.

**25. Effective Date.** Upon execution of this Agreement by both parties, this Agreement shall be a valid and binding obligation enforceable in accordance with its terms and conditions and effective upon the date of the Director’s signature.

In witness whereof, the parties hereto have executed this Agreement.

*[NAME OF VOLUNTEER / OWNER – add signature blocks as needed]*:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OHIO ENVIRONMENTAL PROTECTION AGENCY:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Anne M. Vogel

 Director of Ohio EPA

*rev. 02/2025*

**[ATTACHMENT 1**

Property Legal Description]

**[ATTACHMENT 1 or 2]**

O&M Plan

**[ATTACHMENT 2 or 3**

Financial Assurance]

1. Notes to drafter: Please remove the editing prompts, italics and footnotes once the draft Agreement is prepared.

The O&M Plan and Agreement do not have to be filed in county records pursuant to ORC 3746.14 but may be reviewed as public records regarding the Property. This Agreement template accommodates the option for future O&M Plan modification (see Modifications section) and may avoid the need to modify the Agreement or Covenant Not to Sue. Also, OAC 3745-300-11(H) provides a process for post-Covenant Not to Sue modification of remedies. [↑](#footnote-ref-1)