

RESOLUTION NO. 2025-7

**RESOLUTION AUTHORIZING THE VILLAGE MANAGER
TO ENTER INTO A CONTRACT WITH THE HAMILTON COUNTY LAND
REUTILIZATION CORPORATION TO APPLY FOR AND PARTICIPATE IN THE
BROWNFIELD REMEDIATION PROGRAM**

WHEREAS: the Hamilton County Land Reutilization Corporation ("HCLRC") has been designated the lead entity for Hamilton County and is allowed to make application on behalf of itself or any eligible partners; and

WHEREAS: the Village of Silverton is an eligible partner and desires to partner with HCLRC and participate in the Brownfield Remediation Program for State Fiscal Years 2024-2025; and

WHEREAS: the Village of Silverton desires to have the property located at 7210 Montgomery Road remediated to improve the environmental integrity of said property; and

NOW THEREFORE BE IT RESOLVED by the Council of the Village of Silverton, that:

SECTION I. The Village Manager is authorized to enter into an access and participation agreement with the Hamilton County Land Reutilization contract to apply for Brownfield Remediation Program funds and oversee the project on behalf of the Village of Silverton.

SECTION II. This Resolution shall take effect and be in force from and after its passage and approval.

Passed this 6th day of February, 2025.


John A. Smith, Mayor

ATTEST:



Jack Cameron, Village Manager

CERTIFICATION:

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Ordinance No. 2025-8 has been duly made by posting true copies in two (2) places that are accessible by the public in said municipality, as determined by Council as follows: 1) Silverton Town Hall lobby area and Council Chambers foyer; and 2) Silverton's official website. Said posting was for a period of fifteen days commencing February 7, 2025.

Approved as to form:


Bryan E. Pacheco, Village Solicitor


Meredith L. George
Clerk of Council of Silverton, Ohio

ACCESS AND PARTICIPATION AGREEMENT
Brownfield Remediation Program
State Fiscal Years 2024-2025

This Access and Participation Agreement (the "**Agreement**") is made and entered into by and between the Hamilton County Land Reutilization Corporation ("**Lead Entity**") and the Participant identified below ("**Participant**"), known collectively as the "**Parties**", as defined herein pursuant to the Brownfield Remediation Program (the "**Program**"), as approved by the Ohio Department of Development ("**Development**") as of the Effective Date listed below.

TERM SHEET

Effective Date: February 3, 2025

Participant: Village of Silverton

Participant Notice to: Jack Cameron, Village Manager

Participant Address: 6943 Montgomery Road, Silverton, OH 45236

Participant Email: j.cameron@silvertonohio.us

Property Address(es): 7210 Montgomery Road, 6847 & 6851 Plainfield Road, Silverton, OH 45236

Hamilton County Parcel No(s): 602-0002-0236; 602-0002-0254; 602-0002-0256

NOTICE

This Agreement consists of this Term Sheet, the standard Terms and Conditions that follow on the subsequent pages, the Program guidelines, Lead Entity's application for Program funds, and any subsequent agreement entered into between Development and Lead Entity governing a Program award. Participant acknowledges that it has read, understood, and agrees to abide by all aforementioned documents, which are incorporated by reference into this Agreement.

INTENDING TO BE LEGALLY BOUND, the Parties have entered into this Access and Participation Agreement as of the Effective Date.

By: _____
Its: _____
Lead Entity

By: Authorized Representative
Participant

TERMS AND CONDITIONS

1. **Rescission of Any Prior Agreements.** Any prior agreements entered into by the Parties related to this Project are rescinded.
2. **Background Matters.** In July of 2023, the Ohio General Assembly enacted House Bill 33, the state budget bill for State Fiscal Years (FY) 2024-2025, and Governor Mike DeWine signed the bill into law. House Bill 33 appropriated \$350,000,000 to the Program to be administered by Development. Program funds are to be awarded through a competitive application process on a "first-come, first serve" basis, and require a funding match of at least 25% of total project costs. Consistent with the Program rules, Development has designated Lead Entity as the lead entity to make an application for Hamilton County on behalf of itself and any eligible partners.
3. **The Project.** Participant has identified an eligible brownfield project at the property address and parcel listed on the Term Sheet within its jurisdiction (the "**Property**") that is consistent with the Program's rules and goals (the "**Project**").
4. **Scope of the Project.** The Project will include brownfield assessment or remedial activities described in Lead Entity's Program application, including but not limited to, asbestos and hazardous materials inspections, abatement (whenever necessary), Phase I and II environmental site assessments, demolition of buildings (including waste removal), and cleanup/remediation (wherever necessary). The scope of the Project is further defined in the attached **Exhibit A**.
5. **Project is a Brownfield.** Participant has confirmed that the Property is a brownfield as defined by the Program's rules, as documented in Lead Entity's Program application.
6. **Project Access.** Participant has legal access to the Project either as the fee simple owner or through a written access agreement with the owner of the Property, as documented in Lead Entity's Program application. To the extent required by the Program and Development, Participant will make the Project accessible to Lead Entity during the performance of the Work and up through and to the conclusion of reimbursement of costs.
7. **Performance of the Project.** Participant will be solely responsible for the performance of all aspects of the Project consistent with the Program, except Project reimbursement as outlined in subsequent paragraphs of this Agreement. Lead Entity will submit all required reporting directly to Development and will be the party contractually and fiduciarily responsible to Development under the Program. Participant will enter into written agreements with Project vendors for eligible services using form templates created by Lead Entity to be consistent with the Program's rules, as outlined in subsequent paragraphs of this Agreement.

Participant will perform the Project to the trade standard and in compliance with local, state, and federal laws and regulations and the terms of the Program, which may be amended from time to time. Participant will remain current on all property taxes it may owe in Hamilton County.

8. **Local Match.** Participant has available local matching funds comprising at least 25% of the expected total cost of the Project, as documented in Lead Entity's Program application. Such matching funds must remain available during the full performance of the Project, up to and including final reimbursement and reporting.
9. **Eligible Costs.** Participant will be reimbursed by Lead Entity through an award from Development for those eligible Project costs incurred on or after July 1, 2024 and no later than June 30, 2026, so long as Participant remains in compliance with this Agreement.

- 10. Administrative Costs.** If Participant and Lead Entity have included administrative costs in Lead Entity's application, such costs may not exceed 10% of the total budget for the Project. All administrative costs must be demonstrated with hourly pay rates, and dates costs were incurred. Lead Entity will not be responsible for paying administrative costs incurred by Participant in the development of Lead Entity's application or the performance of the Project that are not awarded by Development through the Program.
- 11. No Award.** Lead Entity makes no representations regarding the likelihood of Project approval and shall in no way be liable to Participant for any funds not received under the Program.
- 12. Prevailing Wage.** If the total cost of the Project meets or exceeds \$75,000 or the current financial threshold established by Ohio law, exclusive of administrative costs, Participant will comply with Ohio's prevailing wage laws, Ohio Revised Code section 4115.03 to 4115.16, with respect to the payment of all mechanics and laborers employed in the construction work funded by the Program. Participant must require its construction vendors to provide certified payroll reports for the employees performing the Project and submit such reports to Lead Entity upon request.
- 13. Project Completion.** The Project must be completed by May 1, 2026, unless otherwise extended by written agreement between Development and Lead Entity. If the project completion deadline is extended, Lead Entity will give timely notice to Participant and may amend this Agreement accordingly.
- 14. Reimbursement Request.** Participant may submit a reimbursement request, including all required documentation, to Lead Entity no more than once a month and consistent with the draw schedule described in the **Exhibit A**. Lead Entity will provide Participant with an itemized list of all documentation and verification required by the Program's rules before the Project performance commences. Lead Entity will submit a reimbursement request to Development no more than once a month and no later than 30 business days after Lead Entity receives all required documentation from Participant.
- Lead Entity will be under no obligation to submit a reimbursement request to Development for the Project if Participant has failed to supply the necessary documentation or failed to supply such documentation in a timely manner.
- 15. Invoice to Lead Entity.** Participant will provide an invoice payable by Lead Entity to Lead Entity with each reimbursement request equal to the amount due under this Agreement. Upon approval by Development of Lead Entity's reimbursement request and within 15 business days after Lead Entity receives the disbursement from Development, Lead Entity will pay Participant's invoice. With its first invoice, Participant will also provide a complete, accurate, and signed IRS Form W-9.
- In no event will Lead Entity be required to pay Participant's invoice if Development does not deliver such funds to Lead Entity for any reason. Further, Lead Entity will not be liable for costs or loss of funding associated with delays by Development out of the control of Lead Entity.
- 16. Reporting.** Participant will provide Lead Entity with a written report documenting the status of the Project on a quarterly basis until the Project is complete and all reimbursements have been approved. Lead Entity will provide Participant a quarterly reporting schedule and an itemized list of reporting obligations prior to the first due date for such a report.
- For the final performance report, Participant will provide Lead Entity with the documentation required by the Program consistent with the Project Category on the Term Sheet and the applicable remediation program that Participant has complied with or achieved (i.e., VAP, BUSTR, RCRA).
- 17. Program Income.** If Participant generates revenue as a result of the Project outside of Lead Entity's Program reimbursement, such revenue may remain with Participant. Participant will provide prompt notice to Lead Entity no later than 30 calendar days after earning such revenue. Such revenue will be restricted to future demolition, brownfield remediation, neighborhood stabilization activities, or

economic development activities and Participant will provide documentation of such expenditures with this revenue to Lead Entity upon demand.

18. Vendor Agreement Requirements. Participant's written vendor agreements for the Project must include the following provisions as required by the Program:

- Anti-kickback and non-collusion provisions;
- Property tax certifications,
- Liability insurance requirements,
- State and federal debarment provisions,
- Drug-Free Workplace and EEO certifications,
- Ohio Ethics and Conflict of Interest Laws provisions;
- Ohio Worker's Compensation Program provisions;
- Work start date and completion date;
- Total amount of money to be paid for the work;
- Responsibilities, terms and conditions for all parties;
- Daily property maintenance and site cleanup provisions;
- Any requirements and limitations regarding sub-contractors;
- Work specifications;
- Signatures and contract date;
- Procedures for inspections, payments, changes in the scope or cost of work, resolving disputes and termination of the contract;
- Appropriate federal and state provisions, including, but not limited to prevailing wage and EEO certifications;
- Requirements regarding the release of liens;
- All applicable warranties; and
- Procedures for settling of disputes.

19. Cooperation with Future Audits. Lead Entity may be the subject of one or more public audits of its financial statements in conjunction with this Program. For a period of up to three years following termination of this Agreement, Participant will cooperate with any reasonable request of Lead Entity, Development, the Auditor of State or its agents, or any other firm associated with auditing the financial statements of Lead Entity as they relate to this Agreement.

20. Default. If for any reason Participant fails to fulfill its obligations under this Agreement in a timely and proper manner or if Participant violates any of the Program's rules, Participant will be in Default of this Agreement. In the event of Default, Lead Entity will provide Participant with written notice specifying the exact nature of such failure or violation resulting in Default. Thereafter, Participant will have 14 calendar days to remedy the failure or violation and notify Lead Entity in writing of the remedy. Lead Entity will determine if the failure or violation has been remedied at its sole discretion. In the event Participant does not remedy the failure or violation within the 14-day calendar period, or if Lead Entity determines in its sole discretion that Participant has failed to satisfy its match funding obligations through eligible expenditures, Lead Entity may terminate this Agreement or suspend any disbursements in whole or in part after giving written notice to the Participant. No act of forbearance or failure to insist on the prompt performance by Participant of its obligations under this Agreement, either express or implied, will be construed as a waiver by Lead Entity of any of its rights hereunder.

21. Participant Independent from Lead Entity. Participant and any or other persons, including any contractors or consultants, engaged in the performance of the Project are not employees or agents of Lead Entity. Participant will be solely responsible for payment of all compensation and all employment-related liabilities owed to any vendors engaged by the Participant.

22. Project Inspection. Participant will permit Lead Entity to enter onto the Property with reasonable advance notice to inspect the Project, including as part of a final inspection conducted in concert with a final reimbursement request. Participant agrees to remedy any deficiencies in the Project that Lead Entity identifies as having been performed in a deficient, unprofessional, unlawful, or unworkmanlike manner within 30 days from Lead Entity's notice to Participant of any such deficiencies pursuant to Lead Entity's inspection, or Participant will be in Default of this Agreement.

23. Indemnification; Liability. Participant agrees to indemnify and hold harmless the Lead Entity against any claims or damages incurred by the Lead Entity as a result of Participant's participation in this Agreement. Furthermore, Lead Entity shall not be held liable for ODOD withholding or recapturing funds related to this Agreement. Additionally, Participant and its subcontractors shall promptly notify the Lead Entity of all damage to property of the Lead Entity or others, and of injuries sustained by any persons, including employees of Participant, in any manner relating directly or indirectly to the project or the services within the scope of this project. Participant agrees to indemnify and save the Lead Entity harmless from and against any loss, cost, damage, expense, and liability by reason of property damage, personal injury, or both, such damage to the extent they are caused directly by any negligent act or negligent failure to act, errors or omissions in connection with the performance of the professional services by Participant working within its scope, its employees, its agents, or its subcontractors.

24. Insurance. Participant shall maintain, at its expense, the following types of insurance, issued by companies acceptable to the Lead Entity covering the services:

1) Worker's Compensation Insurance, including occupational diseases, providing for the payment of benefits required by the laws of the state in which the Project is located, covering the persons employed by Participant on the Project, and Employer's Liability Insurance with a minimum limit of \$1,000,000.

2) Commercial General Liability Insurance, including contractual liability, completed operations, products liability, personal injury liability, and broad form property damage providing coverage with limits of at least:

Bodily Injury and Property Damage	\$1,000,000 per occurrence
Combined	\$1,000,000 aggregate
Personal Injury	\$1,000,000 aggregate

3) Business Automobile Liability Insurance providing coverage with limits of at least:

Bodily Injury and Property Damage	\$1,000,000 per accident
Combined	\$1,000,000 aggregate

4) Umbrella Form Excess Liability Insurance providing coverage with limits of at least:

Bodily Injury and Property Damage	\$5,000,000 per occurrence
Combined	\$5,000,000 aggregate

All of the above policies, with the exception of Worker's Compensation, shall be endorsed to include a Waiver of Subrogation in favor of the Lead Entity. The Lead Entity, as well as the Port of Greater Cincinnati Development Authority, shall also be named as an additional insured on a primary and non-contributory basis on these policies. A certificate of insurance evidencing this coverage will be provided to Lead Entity before proceeding with the Project. Thirty days' cancellation notice will be given in writing to the Lead Entity.

25. Assignment, Delegation and Subcontracting. This Agreement and its rights and duties may not be assigned, delegated or subcontracted by Participant without the prior written consent of Lead Entity,

and any purported assignment, delegation or subcontracting of this Agreement without the explicit written consent of Lead Entity will be void. If Participant transfers or loses title to the Property prior to disbursement of any portion of the Grant, Lead Entity may terminate the Agreement.

26. **Economic Inclusion.** Lead Entity is committed to helping build and sustain strong and capable Minority Business Enterprises ("MBE"), Women Business Enterprises ("WBE"), and Small Business Enterprises ("SBE") in Hamilton County, Ohio. To support this commitment, Participant shall use commercially reasonable efforts to meet or exceed the following goals for economic inclusion in the Project: 25% MBE participation; 7% WBE participation; and 30% SBE participation.
27. **Non-Discrimination.** Pursuant to O.R.C. 125.111 and Development's policy, Participant agrees that Participant and any person acting on behalf of Participant will not discriminate, by reason of race, color, religion, sex, sexual orientation, gender identity, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement. Participant further agrees that Participant and any person acting on behalf of Participant will not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, sexual orientation, gender identity age, disability, military status, national origin, or ancestry.
28. **Kickbacks.** Participant represents and warrants that Participant has not provided, attempted to provide, offered to provide, solicited, accepted, or attempted to accept any payment back from any contract, or kickback, and Participant covenants and agrees that Participant, its employees and agents will not provide, attempt to provide, offer to provide, solicit, accept, or attempt to accept any kickbacks during the term of this Agreement. Participant further represents and warrants that it has not knowingly included, directly or indirectly, the amount of any kickback in the estimated cost of any Project nor will knowingly include, directly or indirectly, the amount of any kickback into any request for reimbursement.
29. **Campaign Contribution Limits.** Participant represents that neither Participant nor any of Participant's partners, officers, directors, or shareholders, if any, nor the spouses of any such person, have made contributions in excess of the limitations specified in O.R.C. 3517.13.
30. **Public Records.** Participant acknowledges that this Agreement and other records in the possession or control of the Ohio Attorney General regarding each Project are public records under O.R.C. 149.43 and are open to public inspection unless a legal exemption applies.
31. **Ethics.** Participant acknowledges that it, through its principal officers, has read and understood Ohio's ethics and conflict of interest laws and will take no action inconsistent with those laws.
32. **Marketing.** Participant gives Lead Entity a non-exclusive, irrevocable, and assignable right to take, use, and include information or photographs of the Project at Lead Entity's discretion. At Participant's request, Lead Entity will provide Participant with copies of any press releases or media announcements related to the Project. Lead Entity and Participant may host a media announcement regarding the Project upon mutual agreement.
33. **Term.** Unless extended in writing by the Lead Entity, the term of this Agreement will run from the Effective Date until the soonest of the following:
 - June 30, 2026;
 - Lead Entity's termination of the Agreement for noncompliance of Participant;
 - Development's termination of the Agreement with Lead Entity.
34. **Notices.** All notices, correspondence, reporting, and other documentation relating to the Agreement will be sent to the following parties:

If to Lead Entity:

Chris Recht
Vice President and Deputy General Counsel
Hamilton County Land Reutilization Corporation
3 East Fourth Street, Ste. 300
Cincinnati, OH 45202
crecht@cincinnatiport.org

If to Participant:

To the Participant notice identified on the Term Sheet

35. General Provisions.

- a) Each party agrees to execute such other and other instruments necessary to comply with this Agreement, any laws, rules, or regulations.
- b) Each and all of the covenants, terms, provisions, and agreements contained in the Agreement will be binding upon and inure to the benefit of the Parties, their respective legal representatives, successors, and assigns.
- c) The Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other party.
- d) No waiver by any party of any breach of the Agreement or of any representation or warranty contained in this Agreement will be held to constitute a waiver of any other breach or of a continuation of the same breach. All remedies provided in the Agreement are in addition to all other remedies provided by law or in equity.
- e) Nothing in the Agreement, express or implied, is intended or will be construed to confer upon, or to give to any person, firm or entity other than the Parties, any remedy or claim under or by reason of the Agreement or any term covenant or condition of the Agreement, and all the terms, covenants and conditions contained in the Agreement will be for the sole and exclusive benefit of the Parties.
- f) This Agreement sets forth the entire understanding of the Parties and may be modified or terminated only by a written document executed by each party to the Agreement.

EXHIBIT A