JOINT PROSECUTION AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE CITY OF CHICAGO REGARDING CLAIMS AGAINST S.H. BELL COMPANY

WHEREAS, the United States Environmental Protection Agency (EPA) issued a Section 114 Information Request to S.H. Bell Company (S.H. Bell) on March 4, 2015, pursuant to the Clean Air Act, 42 U.S.C. § 7414(a)(1);

WHEREAS, EPA and the City of Chicago (City) will collaborate in their investigation of violations of the Clean Air Act and _____by S.H. Bell;

WHEREAS, EPA and the City anticipate that certain enforcement sensitive documents may be exchanged during the enforcement investigation, any prospective prosecution, and any ensuing settlement discussions and, that consistent with this Joint Prosecution Agreement (Agreement) would not be subject to public disclosure, because they may constitute records or information compiled for law enforcement purposes, the production of which could reasonably be expected to interfere with enforcement proceedings within the meaning of 5 U.S.C. § 552(b)(7)(A);

WHEREAS, EPA and the City agree to treat all documents as privileged and confidential, consistent with the terms of this Agreement, and to take all appropriate actions to withhold the documents considered to be privileged, confidential, and enforcement sensitive;

WHEREAS, EPA and the City have a common interest in prosecuting any claims against S.H. Bell, and wish to work together to protect their common interest by communicating in confidence about claims, evidence, litigation strategy, or settlement strategy and other subjects pertaining to the above-described claims and prosecution;

WHEREAS, EPA and the City recognize that it will be mutually beneficial to share the

expenses and obligations that will be incurred in pursuing the allegations against S.H. Bell; and

WHEREAS, EPA and the City recognize that, by virtue of their joint litigation efforts, they have been and will continue to be able to avoid duplicative efforts by their respective counsel, employees, consultants, and agents.

NOW THEREFORE, EPA and the City (individually a "Party" and together "the Parties") memorialize the Agreement recognizing that there is a need to protect the flow of confidential, privileged, or otherwise protected information that needs to be exchanged to effectuate a joint prosecution and hereby agree as follows:

1. Intent. This Agreement is intended to provide a mechanism for the confidential exchange of documents and information between the Parties, to reduce the duplication of information gathering and maintenance costs, to improve standardization of information, and to increase the quality and quantity of information developed for joint prosecution and/or settlement of this matter.

2. Non-Waiver. By exchanging documents and communications with each other, the Parties do not waive any privilege, immunity, or other basis for confidentiality that otherwise applies to these documents and communications.

3. Confidentiality. If the Parties exchange documents and communications with each other that otherwise are claimed to be privileged, immune from disclosure, or subject to another legal claim of confidentiality, the Party sending such documents shall identify the sender and stamp or otherwise mark each such document as "privileged and confidential," and the Party receiving the documents and communications shall take measures to ensure that the documents and communications remain confidential, which shall include, but not be limited to:

a. maintaining such documents in separate files from non-privileged documents;

b. restricting access to privileged files, documents, or other information to the receiving Party's attorneys or other legal or technical staff or consultants working on the above-styled actions or similar actions that have been or may in the future be brought by the Parties;

c. taking all necessary and appropriate measures to ensure that any person who is granted access to any confidential information or documents shared pursuant to this Agreement is familiar with the terms of this Agreement and complies with such terms as they relate to the duties of such person;

d. giving immediate notice to the Party who provided the document or communication if disclosure of any privileged document or communication is requested by any person who is not a party to this Agreement; and

e. asserting appropriate privilege(s) to decline any requested disclosure of such documents and communications to any person who is not a party to this Agreement.

4. Disclosure by Agreement. Nothing herein shall prevent the Parties from disclosing documents, communications, or information to non-parties with the express, written permission of the authorized representative of the Party who provided the information or as required by court order.

5. Inadvertent Disclosure. Any disclosure by a Party that is inconsistent with this Agreement shall not waive the confidentiality of such documents or communications.

6. Termination. Either Party may terminate its participation in this Agreement by prior written notice to the other Party. However, the provisions of this Agreement, including the confidentiality requirements of paragraph 2, shall continue to apply to all documents and communications exchanged prior to or during the pendency of this Agreement. The terminating Party shall return all copies of privileged documents provided pursuant to this Agreement upon request by the Party who provided the information.

SO AGREED:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____

T. Leverett Nelson
Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, Illinois 60604

Dated: _____

FOR THE CITY OF CHICAGO:

_____

Dated: _____

Signature Page, Joint Prosecution and Confidentiality Agreement Between the United Statess of America and the City of Chicago Regarding Claims Against the S.H. Bell Company, Chicago, Illinois