

OEPA FINAL - 4/4/2014

AGREEMENT OF SETTLEMENT AND RELEASEIntroduction

The following is an Agreement reached between the Ohio Environmental Protection Agency and George Elmaraghy, former Chief of Division of Surface Water of the OEPA. The OEPA acknowledges and expresses its appreciation of Mr. Elmaraghy's nearly 40 years of dedicated public service to Ohio and the OEPA. His experience and expertise has well served the agency and the people of Ohio in protecting Ohio's waterways and establishing a positive legacy for future leaders of the Agency. As Division Chief he guided and implemented policy as well as directing the work of the employees of the Division.

This Agreement of Settlement and Release ("Agreement") is entered into this 25<sup>th</sup> day of April, 2014, by and between George Elmaraghy for himself and any and all of his heirs, successors, assigns, agents, representatives, spouse, attorneys and all other affiliated and related individuals (collectively referred to as "Elmaraghy") and the State of Ohio, the Ohio Environmental Protection Agency, individually and all of its present, former and future directors, officers, representatives, employees, insurers, successors, agents, attorneys, assigns, heirs, beneficiaries, personal representatives, executors, administrators and any and all persons acting by, through under or in concert with any of them, including any other employees or agents of any agency or branch of government of the State of Ohio, and the Ohio Environmental Protection Agency (collectively referred to as "Agency").

WHEREAS, Elmaraghy and the Agency wish to resolve all of Elmaraghy's potential and existing claims and disputes against the Agency, whether known or unknown, as of the date of this Agreement;

# Exhibit 3

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WHEREAS, the Agency believes that it has acted lawfully and properly in all respects but wants to avoid the time and expense of litigation;

WHEREAS, Elmaraghy filed administrative appeals with the State Personnel Board of Review, Case Numbers 13-REM-08-0203, 13-REM-09-0226, and 13-WHB-08-0204 and filed a complaint with the U.S. Department of Labor, Case Number 5-1800-14-027;

WHEREAS, the Agency has steadfastly denied any and all liability and refuted each and every allegation made in these actions; and

WHEREAS, the parties now desire to amicably and completely resolve all of their differences involving the subject of all claims that were or could have been raised in conjunction with employment of Elmaraghy with the Agency.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the parties, Elmaraghy and the Agency hereby agree as follows:

1. Elmaraghy does hereby fully and forever release and discharge the Agency of and from any and all claims in the Appeal, any other claims, demands and complaints which Elmaraghy may have had or now has up to the date of this Agreement arising out of his employment with the Agency, whether in law or in equity, civil or criminal, vested or contingent, before any federal, state, local or private court, agency, arbitrator or other entity, whether for damages, wages, severance pay, front pay, back pay, pension or retirement benefits, interest, attorneys' fees, costs, expenses and/or any other relief or remedy under any contract and/or federal, state or local law, ordinance or regulation, including but not limited to laws or regulations covering unemployment insurance benefits, workers' compensation, industrial accidents, the National Labor Relations Act, as amended (29 U.S.C. §141 *et seq.* and 29 U.S.C.

§151 *et seq.*), Title VII of the Civil Rights Act of 1964, and the Civil Rights Act of 1991 (42 U.S.C. §2000e *et seq.*), the United States or Ohio Constitutions and Amendments, Sections 1981 through 1988 of Title 42 of the United States Code, the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. §1001 *et seq.*), the Immigration Reform and Control Act (8 U.S.C. §1101 *et seq.*), the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*), the Age Discrimination in Employment Act of 1967, as amended by the Older Worker Benefit Protection Act (29 U.S.C. §621 *et seq.*), the Fair Labor Standards Act, as amended (29 U.S.C. §201 *et seq.*), the Occupational Safety and Health Act, as amended (29 U.S.C. 651 *et seq.*), the Family and Medical Leave Act (29 U.S.C. §2601 *et seq.*), the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (38 U.S.C. §4301 *et seq.*), the Worker Adjustment and Retraining Notification Act of 1988 (29 U.S.C. 2101 *et seq.*), and the Sarbanes-Oxley Act (18 U.S.C. §1514A *et seq.*). Elmaraghy also waives and releases the Agency from any and all claims under federal and state whistleblower statutes, codes or regulations, including but not limited to the claims filed with Elmaraghy's claims listed in his October 17, 2013 (dated October 17, 2003) claim filed with the U.S. Department of Labor. Elmaraghy further waives and releases the Agency from any and all claims or demands arising under state or local law (e.g., Ohio Revised Code §124.01 *et seq.* (Ohio Civil Service Laws); Ohio Revised Code §4112.01 *et seq.* (Civil Rights); O.R.C. §4113.51 *et seq.* (Whistleblower's Protection); O.R.C. §4123.01 *et seq.* (Workers' Compensation); O.R.C. §4123.90 (Workers' Compensation Retaliation); etc.) of like or similar import, including but not limited to any and all common law claims, including but not limited to breach of oral, express, or implied contract; promissory estoppel; wrongful discharge; violation of public policy; interference with lawful business relationships; intentional and/or negligent infliction of emotional distress; loss of consortium; any claims for personal

injury; any claims for failing to obtain employment with any other person or the Agency. Elmaraghy further waives and releases the Agency from any other claims under any other tort, contractual, common law, constitutional (including any claim for Due Process, First Amendment, Fourteenth Amendment, Equal Protection claims, etc.) or statutory theory that Elmaraghy may have had or now has up to the date of this Agreement. Elmaraghy further specifically waives any and all rights afforded to him under the Family and Medical Leave Act (29 U.S.C. §2601 *et seq.*) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (38 U.S.C. §4301 *et seq.*). Notwithstanding the foregoing release and waiver of all legal rights and claims, nothing in this Agreement shall affect or be construed to affect any vested or accrued rights in any savings, pension, deferral, retirement, or welfare benefit plan in which Elmaraghy is a participant.

2. Elmaraghy further agrees to dismiss with prejudice his Appeals at the State Personnel Board of Review and any and all claims and demands therein asserted against the Agency. It is further agreed that Elmaraghy will file a Withdrawal of Appeal with Prejudice in the State Personnel Board of Review Case Numbers 13-REM-08-0203, 13-REM-09-0226, and 13-WHB-08-0204 within ten (10) calendar days after Elmaraghy receives the payments set forth in this Agreement. This Withdrawal of Appeals is attached as Exhibit A.

3. Elmaraghy further agrees to withdraw with prejudice his Appeal and claim filed with the U.S. Department of Labor Case Number 5-1800-14-027 and DOL Appeal Case Number 2014-TSC-2. Elmaraghy agrees to file in writing the Notice to Withdraw the Claim within ten (10) calendar days after receipt of the payments set forth in this Agreement. This Withdrawal of Appeal and claim is attached as Exhibit B.

4. Elmaraghy recognizes and understands that by executing this Agreement, Elmaraghy will be releasing the Agency from any claims under the Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq.*, as amended by the older Workers Benefit Protection Act, 29 U.S.C. §621 *et. seq.*, by reason of any matters or things arising out of, or in any way connected with, directly or indirectly, any acts or omissions which occurred prior to and including the effective date of this Agreement.

5. The Agency will, in consideration of the terms and conditions of this Agreement, provide Elmaraghy an adjustment of the pay range assigned to Elmaraghy's position as Division Chief. The adjustment will be to pay range 17 from pay range 16 for the period beginning January 24, 2010, through the date of Elmaraghy's separation from the Agency on September 13, 2013 which includes the vacation and personal leave balances converted at the time of Elmaraghy's retirement. The attachment to this Agreement specifies the hours adjusted and the attachment is agreed by the parties and incorporated by reference. The Agency will process the pay range adjustment through the payroll of the State. Both parties acknowledge and agree that this adjustment will be subject to various deductions, pension contributions and payroll taxes and that those will be understood by both parties to be their responsibility and obligation. The Agency will also make a one-time payment to Marshall and Morrow, LLC, attorneys for Elmaraghy in the amount of twenty thousand dollars (\$20,000.00) for attorney's fees for Elmaraghy in the USDOL matter referenced above. The payments set forth in this Agreement shall be made as promptly as possible. If payments are not made within 60 days of the date of Elmaraghy's execution of this Agreement, written notice that payments have not been received shall be delivered to Jonathan J. Downes, counsel for the Agency. The Agency will be provided

an opportunity to respond and Elmaraghy may thereafter pursue enforcement in the Court of Claims.

6. Elmaraghy acknowledges that he is solely responsible for the payment of any federal, state, and local tax, which may include any assessments and retirement contributions that may be due on any of the payments made hereunder. Elmaraghy agrees to pay all tax that may be due and owing from Elmaraghy under applicable law on any sum paid to him hereunder, and agrees to indemnify and defend the Agency and hold them harmless in the event that the Agency alleged by any taxing authority to be liable to any extent on account of Elmaraghy's failure to pay such tax. Elmaraghy acknowledges and agrees that the payments he is to receive pursuant to this Agreement are to be considered as earnings subject to pension contributions under the Ohio Public Employees Retirement System and that Elmaraghy will be responsible for such contributions including reimbursing the Agency for any payments it may make for Elmaraghy's share of the pension contributions. The parties agree that none of the payments made are for punitive or liquidated damages.

7. Elmaraghy hereby agrees to indemnify and hold harmless the Agency for any and all claims, demands, deficiencies, fines, penalties, levies, assessments, executions, judgments, losses, costs or recoveries, including, but not limited to, attorneys' fees and litigation expenses, incurred by Elmaraghy concerning the payments described above. Elmaraghy also agrees that he waives all rights to interest on the above amounts under O.R.C. §1343.03, common law or any other law. Elmaraghy further agrees that the Agency has compensated him for all hours worked in accordance with federal, state and local wage and hour laws and that the Agency does not owe Elmaraghy any unpaid wages.

8. Elmaraghy acknowledges that he has not initiated a claim, lawsuit, charge of discrimination or any other legal proceeding against the Agency other than the appeals at the State Personnel Board of Review and claims with the United States Department of Labor and any claims with the United States Environmental Protection Agency.

9. Elmaraghy agrees never to file or otherwise initiate a claim, lawsuit or any other legal proceeding against the Agency for any conduct which occurred up to and including the date of this Agreement. If any such court assumes jurisdiction over any such complaint against the Agency, Elmaraghy will direct that court to withdraw from or dismiss the matter. Elmaraghy agrees that he will not assist any former, current or future employee of the Agency to pursue any employment claim(s) against the Agency, unless specifically subpoenaed or required by law to appear in such proceedings.

10. Elmaraghy acknowledges that this Agreement does not prevent Elmaraghy from participating in proceedings before any governmental administrative agency (e.g., the Ohio Civil Rights Commission, the Equal Employment Opportunity Commission, etc.), but except where prohibited by law, Elmaraghy expressly and voluntarily waives any right that he may have otherwise had to recover any damages or any other relief whatsoever, whether in law, equity, or restitution, in any proceeding that is or may be brought on his behalf by such governmental administrative agency. Elmaraghy also agrees to request the dismissal or discharge of any matter pending before either the OCRC or EEOC.

11. Unless requested to be employed or act as a consultant to the Agency by the Director of the Agency, Elmaraghy agrees not to seek employment or re-employment with the Ohio Environmental Protection Agency at any time in the future. If Elmaraghy does seek re-

employment with the Agency, Elmaraghy agrees and understands that the Ohio Environmental Protection Agency may, at its discretion deny him employment.

12. Elmaraghy and the Agency both acknowledge that by entering into this Agreement neither admit any wrongful or unlawful act or violation of any federal, state or local statute, law, ordinance or regulation. Elmaraghy and the Agency both further acknowledge that each specifically denies any wrongful or unlawful acts and that entering into this Agreement is solely for the purpose of avoiding the time and expense involved in proceeding with a lawsuit. This Agreement extends to all claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, that exists or might exist at the time this Agreement is executed.

13. Elmaraghy represents and acknowledges that in executing this Agreement, he does not rely and has not relied upon any representations or statements made by any other party hereto, or by any other party's agents, representatives or attorneys.

14. Under the federal Age Discrimination in Employment Act of 1967 (the "ADEA"), as amended by the Older Workers Benefit Protection Act (29 U.S.C. § 621 et seq.), Elmaraghy is hereby advised to consult with an attorney prior to signing this Agreement and has been given at least twenty-one (21) days from the receipt of this Agreement to consider this Agreement before signing it; provided that in no event shall this Agreement be returned to the Agency's attorneys later than twenty-one (21) days from the date of receipt. If Elmaraghy signs this Agreement sooner it is because he has voluntarily waived his right to consider this Agreement for the full 21 days.

Elmaraghy has the right to revoke this Agreement after he signs it. But Elmaraghy understands that if he wants to exercise this right, he must do so no later than seven (7) calendar

days after he has signed this Agreement, and must prepare a written document that says, in effect, "I revoke this Agreement," and he must deliver this document by hand delivery or certified mail to Jonathan J. Downes, Zashin & Rich Co. L.P.A., 17 S. High Street, Suite 750, Columbus, OH 43215 within that seven (7) calendar day period. Elmaraghy understands that his revocation will not be effective unless it is actually delivered no later than seven (7) calendar days after the date he has signed this Agreement. Elmaraghy also understands that if he revokes this Agreement, then Elmaraghy and Elmaraghy's Attorney will not receive the payments described in this Agreement and this Agreement will become null and void.

15. Elmaraghy represents and warrants that he has neither made, nor suffered to be made, any assignment or transfer of any right, claim, demand or cause of action which is the subject of this Agreement and that Elmaraghy is the sole and absolute legal and equitable owner of all rights, claims, demands or causes of action herein released.

16. This Agreement and any agreed attachments constitute the entire Agreement between Elmaraghy and the Agency and there are no other oral or written Agreements between Elmaraghy and the Agency. No waiver, modification or amendment of any terms, conditions or provisions of this Agreement will be valid or have any force or effect unless made in writing and signed by the parties.

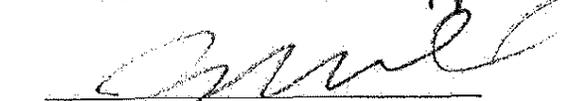
17. The provisions of this Agreement are severable, and the invalidity of any one or more of the provisions will not affect or limit the enforceability of the remaining provisions. Should any provision be held unenforceable for any reason, the remaining provisions will be enforced to the maximum extent permitted by law.

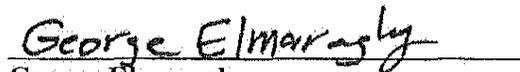
18. The parties acknowledge that this Agreement will be construed and interpreted in accordance with the laws of the State of Ohio. The parties hereto voluntarily consent to allow

the courts of the State of Ohio to assume jurisdiction over any disputes and/or controversies between the parties arising out of or concerning this Agreement. The parties agree that any litigation arising out of this Agreement or concerning the rights and obligations hereunder, will be commenced and maintained in the appropriate court in the State of Ohio.

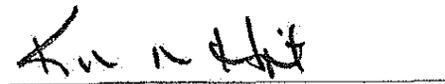
ELMARAGHY REPRESENTS AND AFFIRMS UNDER PENALTIES OF PERJURY THAT HE EXECUTES THIS AGREEMENT KNOWINGLY, VOLUNTARILY AND WITHOUT DURESS, THAT HE HAS BEEN THOROUGHLY ADVISED OF HIS RIGHT TO DISCUSS ALL ASPECTS OF THIS AGREEMENT WITH COUNSEL PRIOR TO EXECUTING THIS AGREEMENT, THAT HE UNDERSTANDS THE TERMS OF THIS AGREEMENT, THAT HE HAS HAD A REASONABLE TIME TO CONSIDER THIS AGREEMENT, THAT ITS TERMS REPRESENT CONSIDERATION IN ADDITION TO ANYTHING OF VALUE TO WHICH HE IS ALREADY ENTITLED, AND THAT HIS ATTORNEY HAS EXPLAINED THE TERMS OF THIS AGREEMENT TO ELMARAGHY.

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of April, 2014

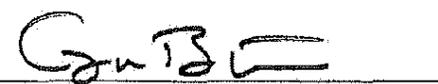
  
Notary Public JOHN S. MARSHALL  
Lifetime Commission  
NOTARY

  
George Elmaraghy

SWORN TO BEFORE ME and subscribed in my presence this 4<sup>th</sup> day of April, 2014

  
Notary Public

State of Ohio, Environmental Protection Agency

By: 

Its: Director

Date: 4/4/2014



**Letter of Understanding  
Calculation of Pay Range Adjustment  
April 1, 2014**

The following is the letter of understanding between the parties and their representatives in the Agreement of Settlement and Release between George Elmaraghy and the Ohio EPA. The terms of the Agreement provide that the pay range assignment to the position of Division Chief, Division of Surface Water be adjusted. The adjustment is understood and agreed to apply for the hours worked, 40 hours per week, for the period beginning January 24, 2010 through the date of retirement of September 13, 2013 or 7535.50 hours.

The leaves converted at his retirement by Mr. Elmaraghy will also be included in the adjustment, and would include only those hours previously converted which were 26.07 hours personal leave and 720 hours vacation leave. It is understood and agreed the adjusted rate would not apply to any other leave conversions including sick leave conversion.

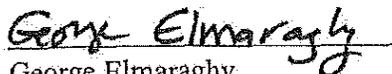
The rate adjustment shall be applied to the following total hours and conversion which is understood and agreed to be as follows:

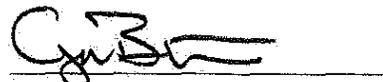
	<u>Base</u>	<u>Long</u>	<u>Total</u>	<u>Difference</u>
P.R. 16	44.38	3.38	47.76	\$4.83
P.R. 17	48.86	3.73	52.59	

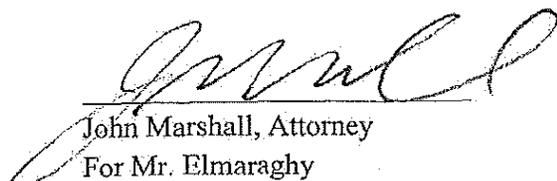
The total hours for which the rate adjustment of \$4.83 per hour shall be applied as follows:

January 24, 2010 to September 13, 2013	=	7535.50 hours
Vacation leave hours converted	=	720.00 hours
Personal leave hours converted	=	<u>26.07 hours</u>
		8281.57 Total Hours

The parties agree that these calculations are consistent with the Agreement of Settlement and Release executed between the parties and is the full and final payment to Mr. Elmaraghy.

  
George Elmaraghy

  
Ohio EPA

  
John Marshall, Attorney  
For Mr. Elmaraghy

  
Attorney for Ohio EPA