

CONTRACT FOR WATER UTILITY SERVICES
BETWEEN
THE CITY OF COLUMBUS, OHIO
AND
THE COUNTY OF FRANKLIN, OHIO

This Contract made pursuant to Resolution No. 0269-09 passed and approved by the County of Franklin, Ohio, hereinafter "the County," authorizing and directing its County Commissioners to enter into this Contract and pursuant to Ordinance No. 320-2008 passed and approved by the City of Columbus, Ohio, hereinafter "the City," authorizing and directing its Director of Public Utilities, hereinafter "Director," to enter into this Contract is hereby made and entered into by and between the said City of Columbus, Ohio, a municipal corporation, and the County of Franklin, Ohio, through its Board of County Commissioners this 14th day of April, 2009.

Whereas, the Big Darby Accord Master Plan was developed collaboratively by the jurisdictions within the Big Darby Watershed in Franklin County as a land use plan that balances environmental protection and responsible growth; and

Whereas, the Big Darby Accord Master Plan was approved by City of Columbus ordinance no. 1330-2006 passed July 31, 2006; and

Whereas, the Big Darby Accord Master Plan was approved by the Franklin County Commissioners in Resolution #864-06 on November 14, 2006; and

Whereas, the Big Darby Accord Master Plan includes the limited extension of water and sewer service by the City of Columbus to certain areas within the Big Darby Accord Planning Area;

Now Therefore, the parties hereto do hereby covenant and agree, as follows:

WITNESSETH:

Section 1. During the term of this agreement,

The County shall have the right, in certain areas within Franklin County as designated in Exhibit A (hereinafter "Service Area"), to receive water service as furnished from the municipal water system of the City in accordance with sections 3 through 11 below.

The County's right to receive water is subject to the conditions of section 2 below.

The Service Area may be extended by modification of this agreement.

Section 2. Compliance with Big Darby Accord Master Plan

The provision of services to new developments under this agreement shall be contingent upon compliance with the principles contained in the Big Darby Accord Master Plan as

amended (hereinafter “the Plan”) and with all policies and procedures now existing or later developed in accordance with the Plan.

The County shall by contract require each developer to comply with all provisions of the Plan including but not limited to the following:

- (a) The County shall by contract require that each development follow the Plan’s general land use map, and to submit the development plan to the Big Darby Accord Panel.
- (b) The County shall by contract require each developer to participate in revenue raising in accordance with the plan, including but not limited to joining or establishing a New Community Authority in a manner that is consistent with the Plan.
- (c) The County shall by contract require each developer to pay a Development Fee (hereinafter “Fee”) in the amount of \$2500 (two thousand five hundred dollars) per residential unit, the purpose of which is to implement the Plan. The Fee shall be paid to the County by each developer at or before the time a building permit is drawn for each residential unit. The Fee is not, and shall not be construed as, a utility extension fee. The County shall utilize the fee solely for the purposes authorized by the Plan, including open space acquisition and extraordinary infrastructure needs. The County shall provide an annual report to the City regarding the amount of money collected and a report of all expenditures.

The provision of services under this contract may not begin until the County has submitted to the City the Contract between the County and the developer.

Section 3. The water supply under this agreement shall be the sole supply and be furnished from the water distribution system of the City of Columbus to the Service Area and the inhabitants thereof through the water distribution system furnished and installed at the entire cost of the County. The water supply shall be restricted for usage within the Service Area. Connections shall be made to the City’s distribution system at locations mutually agreed upon in writing between the County and the City. The County shall have the right to connect its water lines to any water mains subsequently installed by the City within, or adjacent to, or reasonably close to the Service Area, provided that the Director of Public Utilities of the City of Columbus may refuse such rights when in his or her opinion, based upon reasonable engineering and other technical review by Department staff, such mains are of insufficient capacity to serve the proposed water service area.

At any connection point where water is furnished such water shall be measured by a meter or meters of the type and capacity approved by the Director of Public Utilities of the City of Columbus. Said meters are to be provided by the City following payment by the County of all applicable meter charges and system capacity charges. Said meters are to be transported from their point of storage by the County and set by the County in accordance with the standard plans and specifications as required by the Division of Power and Water of the City of Columbus. Such meters shall be installed in an adequate protective structure at a location approved by the Director of Public Utilities of the City of Columbus. The installation of all meters, protective structures, water mains, and appurtenant work shall be at that sole cost and expense of the County. Maintenance of the meters shall be at the expense of the City. All

other required maintenance or replacement of the meter setting or protective structure as determined by the Administrator of the Division of Power and Water of the City of Columbus shall be at the expense of the County. The City shall have free access to these meters for the purpose of reading the meters at any time throughout the duration of this Contract.

The City reserves to itself the right to change at anytime the type or capacity of any meter measuring the flow of water from the City into the Service Area whenever, in the opinion of the Administrator of the Division of Power and Water of the City of Columbus, such changes are necessary to improve the accuracy of the metering system and that said changes can be made without appreciably affecting the quality of service to the Service Area. Said meter changes shall be made at the sole expense of the City.

Any extensions of the distribution system of the Service Area including design, construction, operation, use and maintenance, and repairs thereto are to be made by the County at its own expense. The water main or mains to be constructed between the Service Area's distribution system and the City of Columbus distribution system shall be for transmission purposes only and shall be operated and maintained by the Division of Power and Water of the City of Columbus. No taps shall be made to said transmission main(s) by the County beyond the limits of the Service Area without the written approval of the Director of Public Utilities of the City of Columbus, Ohio.

The County will submit a copy of changes or additions to the water distribution system and a set of plans and digital copies as built for all water facilities installed, to the Division of Power and Water of the City of Columbus for record purposes. The City shall furnish to the County copies of water distribution drawings as built, and any subsequent changes thereto, and of all water facilities within or adjacent to the Service Area.

The County shall maintain up-to-date mapping of its water distribution system and shall furnish copies of all location atlas maps showing the overall water distribution system to the City annually. The County shall also furnish additional copies of its location atlas maps as and when individual maps are changed or brought up-to-date.

The City reserves to itself the right to add or delete any chemicals to the water which is deemed necessary by the electorate, executive, legislative or administrative bodies of the City and shall be in the exclusive control of the City and these bodies, each within their specific authority. The City is not subject to any requirements of the County, whether through the County's electorate, executive, legislative or administrative bodies, to add or delete chemicals to the water supply.

The City reserves to itself the right to approve any actual connection to its water lines and/or chlorinate all water lines connected directly or indirectly to its water line and, in such event, the County shall pay the actual cost of labor and materials plus twenty-five percent with respect to lines designated solely to service the Service Area and its inhabitants.

Notwithstanding the foregoing limitation and the exclusive right of the City to chlorinate all water lines connected directly or indirectly to its water lines, the County may, at its option, make such connections providing the labor and materials therefore.

No cross-connection shall be made or permitted with any other water supply than that of the City of Columbus. The Service Area shall have an OEPA approved backflow program.

Section 4. The aforesaid meters shall be read by meter readers of the City of Columbus. Twenty-four hours notice of the meter readings shall be given to the County and a representative of the County shall have the right to accompany the meter readers of the City when said readings are taken. The amount of water consumed shall be computed and a bill presented to the County at three (3) month intervals. The County shall, within thirty-five (35) days after the bill is mailed, make payment thereof in full to the City of Columbus. Failure to make full payment within the thirty-five (35) days following the mailing of said bill will result in the addition of a penalty to the unpaid bill. The amount of the penalty shall be ten percent (10%) of the unpaid bill and shall be due at the time of payment of the overdue bill.

Further, failure of the County to make payment to the City within thirty (30) days of the due date shall be sufficient reason for the City to discontinue the water supply service to the County without resorting to any legal proceedings in law or equity, and the County shall save the City harmless from each, every and all claims or suits for damages to the persons and / or properties, to the inhabitants of and / or to the County.

The water rates to be charged to the County for water furnished pursuant to this contract shall be the prevailing rate as specified in Section 1105.055 of the Columbus City Code.

In the event of failure of any meter the amount of water consumed shall be estimated by the Administrator of the Division of Power and Water of the City of Columbus. Such estimates shall be based on the average daily consumption used during any similar period.

Section 5. The water supply aforesaid shall be for the domestic, commercial and industrial usage for the Service Area and its inhabitants. The Director of Public Utilities of the City of Columbus reserves the right of approval for any water service connection where usage will exceed an instantaneous demand of two-hundred gallons per minute (200 gpm). Larger consumption may be permitted if, in the opinion of the Director of Public Utilities of the City of Columbus, such usage will not impair the Columbus Service Area.

The County agrees that should any of the area defined under this agreement annex to the City of Columbus, or other suburban community, the City of Columbus, or other suburban community, shall have the right to serve such annexed area irrespective of this agreement.

Section 6. The City of Columbus shall have the right to connect its water lines to any water lines owned or installed by the County for the purpose of supplying water to other consumers; provided, however, that the County may refuse such rights when such water line is of insufficient capacity to serve the proposed service area. Such connections shall be made by the City of Columbus at its cost and expense. Whenever practical, as determined by the Administrator of the Division of Power and Water, of the City of Columbus, water at any such connection shall be metered in like fashion to that entering the Service Area water system and the City of Columbus shall be solely responsible for the cost of installing any

necessary meters. Where master metering is not practical the volumes of water taken from the distribution system of the Service Area, as recorded on individual meters, read by the Division of Power and Water of the City of Columbus, shall be credited to the Service Area's water consumption on the billing following the most recent reading of said individual meters. Prior to making any such individual connection to a water line owned or installed by the County for other consumers, written permission must first be obtained from the Administrator of the Division of Power and Water of the City of Columbus. A tapping permit must then be obtained from the County and all applicable fees shall be paid to the County before a service agreement is requested with the City of Columbus.

Conversely, the County may grant, in writing, permission to inhabitants of the Service Area to request tapping permits from the Division of Power and Water, of the City of Columbus, for individual connections to water lines owned or installed by the City of Columbus. Upon approval of said request and payment of all applicable fees to the Division of Power and Water of the City of Columbus, said inhabitants shall obtain a water service agreement with the County. The volumes of water taken from the distribution system of the City of Columbus as recorded on individual meters read by the County shall be added to the Service Area's water consumption on the billing following the most recent reading of the individual meters.

Section 7. During the term of this Contract, the County grants to the City of Columbus the right to enter into the Service Area, its streets, highways, alleys or other public easements for the purpose of the agreement and for the further purpose of laying any large feeder mains which may be deemed necessary by the Director of Public Utilities of the City of Columbus on the basis of sound engineering principles to build up an adequate feeder main distribution system in the entire area to be serviced by the City of Columbus, included but not being limited to the Service Area.

The City of Columbus pledges to make such large feeder main installations at its own expense and to restore all streets, highways or alleys to the extent to the same condition in which they were found prior to such installation. The rights to preserve, maintain, operate and repair any facility so constructed shall continue after the expiration of this agreement and the ownership shall remain in the City of Columbus. During the period of this agreement, the County may connect any main or mains of its distribution system to any such feeder main aforesaid with the approval of the Director of Public Utilities of the City of Columbus. Such connections shall be made by the City of Columbus and paid for by the County under the same terms as provided in Section 10 of this agreement.

The plans and specifications for laying and extension of such large feeder mains shall be submitted to the County for approval from an engineering standpoint. Such approval from an engineering standpoint or rejection fully supported by the engineering reasons, therefore, shall be made by the County within thirty (30) days after submission of said plans and specifications. Failure of the County to submit in writing, rejections of any parts of the plans and specifications or in their entirety shall constitute approval of the County and acquiescence in such plans and specifications and the City of Columbus is hereby given the right to proceed with the construction.

The City of Columbus agrees to provide to the County, upon request, any available information about the water system which may be necessary in order to determine the adequacy of water service being provided to the Service Area.

Section 8. The City of Columbus shall have the right to temporarily shut off the water supply of the Service Area or any part thereof whenever alterations, additions, or maintenance operations make it necessary. The City of Columbus, Division of Power and Water, shall give the County reasonable notice and probable duration of such shut offs, except in the case of serious break or accident, wherein water service will be discontinued immediately and notice will follow as soon as possible. Under no circumstances will the City of Columbus be held liable or responsible for any damage that may result in the Service Area or to its inhabitants thereof due to any necessary discontinuance of water service.

Section 9. The term of this agreement will commence on 5/21/2009 and shall remain in full force and effect for twenty years until midnight of 5/21/2029. Unless written notice is given by either party to the other at least three years prior to 5/21/2029, the agreement shall remain in effect for an additional three year period. In the same manner, this agreement and any amendments thereof shall remain in effect from three-year term to three-year term thereafter, subject to termination after the expiration of any term upon written notice given by either party to the other at or before the expiration of the previous three-year term. Written notice of the intent to terminate this agreement must be given to the Director of Public Utilities for the City of Columbus or to the Franklin County Commissioners.

Section 10. Failure on the part of either party to this agreement to faithfully discharge its obligations and responsibilities hereunder, either in whole or in part, shall vest in the other party to the agreement the right to terminate same, effective ninety (90) days after written notice of such failure and the intent to terminate is delivered to the offending party, provided that the offending party shall have the right to cure or correct such failure to faithfully discharge its obligations and responsibilities and upon demonstration thereof, such notice of termination shall not be effective and this agreement shall remain in full force and effect without prejudice to the City's right to collect amounts due and owing to the City arising under the terms of this agreement prior to notice of termination.

Section 11. If any portion of the agreement proves to be invalid or unenforceable, the same shall not be held to invalidate or impair the validity, force, or effect of any other portion of this agreement unless it appears that such other portion is wholly or necessarily dependent for its operation upon the portion so held invalid or unenforceable.

THE CITY OF COLUMBUS, OHIO

By [Signature]
Director of Public Utilities

THE COUNTY OF FRANKLIN, OHIO

By [Signature]
PAULA BROOKS

By [Signature]
MARILYN BROWN

By [Signature]
JOHN O'GRADY
Board of County Commissioners
Franklin County, Ohio

APPROVED AS TO FORM:

[Signature] 5-29-09
City Attorney
City of Columbus

[Signature] 4-7-09
Prosecuting Attorney
County of Franklin, Ohio