

**FIFTH MODIFICATION TO THE TRANSFER AGREEMENT AND
MODIFICATION OF LEASES
BY AND BETWEEN
THE SOLID WASTE AUTHORITY OF CENTRAL OHIO
AND THE CITY OF COLUMBUS**

THIS FIFTH MODIFICATION (“Fifth Modification”) TO THE TRANSFER AGREEMENT (“Transfer Agreement”), associated leases and documents, is made and entered into on the day and dates hereinafter set forth, in multiple copies, each to constitute an original, by and between the SOLID WASTE AUTHORITY OF CENTRAL OHIO, (“SWACO”) pursuant to Resolution No. 15-04, and THE CITY OF COLUMBUS, (the “City”) pursuant to Ordinance No. 0495-2004, for the specific purposes hereinafter set forth.

WITNESSETH:

WHEREAS, SWACO and the City entered into the Transfer Agreement and other associated documents, which, among other things, transferred possession of the City’s Solid Waste Reduction Facility (the “Facility”) and satellite “shredder” stations (the “Transfer Stations”) to SWACO, as lessee of the Facility, and imposed certain obligations, including lease payments upon SWACO; and

WHEREAS, the City operated the Facility as a Waste-to-Energy Facility for approximately eleven (11) years, and SWACO operated the Facility as a Waste-to-Energy Facility for approximately one (1) year; and

WHEREAS, due to certain federal court decisions, SWACO declined to continue operating the Facility as a Waste-To-Energy Facility, and SWACO converted the Morse Road and Georgesville Road Shredder Stations into municipal solid waste transfer stations, and opened a transfer facility at closed Waste-To-Energy Facility; and

WHEREAS, SWACO and the City, of necessity, entered into several arms-length modifications of the associated documents, in part resulting from SWACO’s inability to make the lease payments according to the schedule set forth in the Transfer Agreement, including a modification to allow for a performance based lease agreement, and a deferral of certain leasehold costs which are inter-related with the ongoing bond obligations for the Facility; and

WHEREAS, SWACO and the City have determined to cause the payment of certain heretofore deferred obligations of SWACO for the lease of the Facility and the Transfer Stations.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties incorporate the foregoing recitals herein and agree as follows:

1. Nothing in this Fifth Modification shall be deemed to supersede, alter or replace any term or condition of the City/SWACO Leases, Transfer Agreement, Memorandum

of Understanding or any contemporaneous or subsequent documents, modifications or amendments thereof except as explicitly set forth herein. Leases as used herein shall include the Leases of the Solid Waste Reduction Facility, Georgesville Road Transfer Station and Morse Road Transfer Station.

2. The parties hereto recognize and agree that this Fifth Modification must at all times be construed in accordance with the requirements contained in the Dismissal Agreement negotiated between SWACO and Mid-American Waste Systems in that particular case styled “Mid American Waste Systems, Inc. et al. v. The Honorable Betty Montgomery, Attorney General of the State of Ohio, et al.” Case No. C2-95-866, United States District Court, Southern District of Ohio, which is incorporated herein by reference.
3. The parties agree that SWACO shall attempt to issue and sell Limited Tax General Obligation Bonds(hereinafter “SWACO Bonds”). Proceeds from the sale of the Bonds shall be paid by wire transfer from SWACO to the City, not later than 72 hours following receipt of the proceeds by SWACO, net of amounts needed for a debt service reserve fund, bond insurance, and other issuance costs. The proceeds shall be first applied by the City to the deferred amounts (hereinafter “Old Deferral”) accrued by SWACO on its leasehold payments in accordance with the Third Modification of the Lease and Transfer Agreement (hereinafter the “Third Modification”) and then to current and future obligations on the leasehold payments. This payment shall be in full and complete satisfaction of the Old Deferral, and SWACO’s obligation to make said payments, or the City to credit said payments, is subject to SWACO’s ability to issue and sell the Bonds. Should SWACO be unable to issue or sell the Bonds in an amount at least sufficient to satisfy the Old Deferral, the parties agree that the terms of this Fifth Modification shall be of no effect with no further action by the parties, and that neither party shall be entitled to any damages or costs, nor shall either party have any liability to the other, related to the failure of SWACO to sell the Bonds.
 - a. In order for SWACO to secure and repay the SWACO Bonds, and in conformance with the Dismissal Agreement, SWACO shall be permitted to use the proceeds of the “New Revenue” described in Paragraphs 3(E) and 6(D) of the Third Modification, other than that portion referred to in Paragraph 8 of the Third Modification except to the extent set forth herein, to make payments as necessary to retire the SWACO Bonds. The SWACO Bonds will be issued to repay the deferred and currently due amounts of the SWACO leasehold obligation, and payments made by SWACO to retire the SWACO Bonds shall be deemed one and the same as payments directly to the City pursuant to the Leases. This New Revenue is referred to in the Dismissal Agreement as a Waiver Fee and a Retired Facility Fee.
 - b. SWACO’s obligation to pay the City remaining amounts on the Lease and Transfer of the Waste-To-Energy Facility and the Transfer Stations shall be secondary to and subordinate to its obligation with respect to any Bonds it may sell to pay the Old Deferral and Lease Payments.
 - c. During the period when SWACO is retiring the SWACO Bonds, Paragraph 8

of the Third Modification is amended to the extent that the City will make actual cash payment of its share of the New Revenue to SWACO at the end of each year to any extent necessary to maintain the debt service reserve fund for the SWACO Bonds at a level equal to the annual debt service for such Bonds. To the extent the reserve fund exceeds this level at the end of any year as a result of excess New Revenue and/or income earned upon the reserve fund, such excess will be paid to the City and applied against SWACO's lease obligation under the amended schedule of Lease Payments.

- d. Any Lease Payments due and owing the City following payment of the SWACO Bond proceeds to the City, any other payments made under the Transfer Agreement and related documents, and application of the City credit detailed in Paragraph 8 of the Third Modification as amended herein, shall be deferred by the City ("New Deferral") for later payment. Amounts deferred in accordance with this Modification, and the Old Deferral as of January 1, 2004, shall be deferred at an interest rate equal to the monthly yield published by StarOhio, except that SWACO's maximum interest rate for deferrals shall not exceed four (4%) percent per annum. Interest shall be compounded monthly.
4. Notwithstanding the provisions of paragraph 10 of the Third Modification which permit the City, upon prior written notice, to discontinue delivery of solid waste to the Satellite Transfer Stations, the City shall remain obligated, during the term of this modified Lease and Transfer Agreement as set forth herein to deliver or cause to be delivered all of the municipal solid waste (MSW) which the City's Division of Refuse collects, has collected by its agents, contractors or assigns, or otherwise controls, to facilities directed by SWACO, and except as otherwise set forth in the Transfer Agreement, associated leases and documents, and any modifications thereof, to pay all applicable fees and charges related to the delivery of MSW by the City to SWACO. This requirement of the City to cause delivery of waste to SWACO facilities shall survive so long as SWACO has an obligation to repay outstanding debt to the City associated with the operation of its solid waste disposal facilities, and thereafter so long as SWACO shall have a valid lease obligation for the WTEF or the Transfer Stations.
 - a. The City agrees to refrain from developing or utilizing competing solid waste facilities. During the term of this modified Lease and Transfer Agreement, the City's Refuse Division will not direct or allow its agents or employees to deliver residential MSW or solid waste materials from City facilities to any facility owned by a third party without the prior, express, written consent of SWACO.
 - b. SWACO shall accept, for disposal at a facility of SWACO's choice, all MSW delivered by the City, its agents or assigns. Notwithstanding the foregoing, nothing in this Modification shall be deemed to require SWACO to accept for disposal any materials delivered to it by the City, which may not be disposed of in a landfill or such other solid waste processing unit SWACO may, in its sole and complete discretion, utilize for processing or disposal of MSW.
 - c. Upon retirement of all of SWACO's financial obligations to the City apart from the one dollar (\$1.00) per year lease payments for the Facility and Transfer

Stations, the City shall no longer receive credits from SWACO for tipping fees or other fees payable to SWACO.

5. The Lease Term for the WTEF, the Morse Road Transfer Station and the Georgesville Road Transfer Station shall be extended from midnight on March 31, 2010, until midnight on March 31, 2054.
6. SWACO's rental obligation during the Lease Term, following retirement of the New Deferral and retirement of the SWACO bonds, shall consist of annual payments of one dollar (\$1.00), which payment shall be made on April 1, of each year subsequent to retirement of the SWACO Bonds and the New Deferral.
7. SWACO's obligation to pay the City its annual net income for the prior year, detailed in Section 3A. of the Third Modification, shall be terminated, and SWACO shall have no further obligation to pay to the City any income amounts except as otherwise set forth in the Transfer Agreement, associated leases and documents, and any modifications thereof.
8. Except as set forth in Paragraph 6 herein, SWACO's leasehold obligation shall remain at 65% of the actual amount of principal, interest, and associated bond costs (equal to the amended schedule of Lease Payments) should the New Revenue be declared unconstitutional or otherwise rendered illegal pursuant to any legal proceedings.
9. This Fifth Modification shall be executed in two copies both of which shall be deemed to be original and such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Solid Waste Authority of Central Ohio and the City of Columbus, by and through their duly authorized representatives, have hereby executed this Fifth Modification to the Transfer Agreement and associated leases and documents on the days set forth below.

WITNESSES:

SOLID WASTE AUTHORITY OF
CENTRAL OHIO

By: _____

Its: _____

Date: _____

WITNESSES:

CITY OF COLUMBUS, OHIO

By: _____

Its: _____

Date: _____