

MODIFICATION
OF
SETTLEMENT AGREEMENT
BETWEEN THE CITY OF COLUMBUS
AND
DEL-CO WATER COMPANY, INC.

This Modification is hereby made and entered into on this _____ day of _____, 20__ between the City of Columbus, Ohio ("Columbus") duly authorized by Ordinance _____ passed _____, and Del-Co Water Company, Inc. ("Del-Co") pursuant to Resolution _____ approved _____.

Whereas, Columbus and Del-Co entered into a settlement agreement on July 6, 1992 related to a lawsuit in the United States District Court for the Southern District of Ohio, Eastern Division, known as Del-Co Water Company, Inc., et al. vs. The City of Columbus, Ohio, et al., Civil Action 2:90-CV-855; and

Whereas, the settlement agreement did not contain a provision that the Court was retaining jurisdiction to approve any amendments or modifications of the settlement agreement; and

Whereas, the parties determined that Court approval of this Modification and any future modifications is not needed; and

Whereas, the settlement agreement establishes certain areas within Franklin County and Delaware County as service areas to receive water utility service from either Columbus or Del-Co; and

Whereas, the settlement agreement includes an Exhibit A, which delineates areas within Delaware County that are reserved for water utility service by Columbus and an Exhibit B, which delineates areas within Franklin County that are reserved for water utility service by Del-Co; and

Whereas, Columbus and Del-Co desire to modify Exhibit A and Exhibit B to revise the areas in Delaware County reserved for service by Columbus, and to revise the areas in Franklin County reserved for service by Del-Co.; and

Whereas, Columbus and Del-Co further desire to clarify the boundaries of those areas within Franklin County reserved for water utility service by Del-Co; and

Whereas, this Modification only modifies water utility service territory between Columbus and Del-Co, such that the City of Westerville and the City of Dublin need not be parties to this Modification as their interests are not affected.

Now Therefore, Columbus and Del-Co agree as follows:

1. The area within Delaware County reserved for water utility service by Columbus, identified by Exhibit A of the settlement agreement, is modified as follows:
 - a. Exhibit A-1 is hereby deleted and replaced with Exhibit A-1, attached hereto, which revises the previous boundary in order to represent areas currently being served by either Del-Co or Columbus. It also depicts areas within Columbus' previously defined service area that are being served by Del-Co that Columbus desires to retain the opportunity to serve if rezoned. If any parcel within these designated areas is rezoned, the newly rezoned parcel shall be eligible for water utility service by Columbus. If Columbus elects not to provide water utility service, Del-Co may provide such service, in which case the change to the boundaries of Exhibit A-1 will be included as a written modification to this Agreement.
 - b. Exhibit A-2 is unchanged
 - c. Exhibit A-3 is unchanged

2. The area within Franklin County reserved for water utility service by Del-Co, identified by Exhibit B of the settlement agreement, is modified as follows:
 - a. Exhibit B-1 is unchanged.
 - b. Exhibit B-2 is hereby deleted and replaced with Exhibit B-2, attached hereto, which more clearly defines the parcels that are within the Del-Co service area. A portion of the area previously reserved for water utility service for Del-Co has been removed and will be served by Columbus. Exhibit B-2, as attached hereto, also includes the addition of Rolling Ridge subdivision and parcels currently being served by Del-Co as shown on the Exhibit.
 - c. Exhibit B-3, attached hereto, is hereby added to Exhibit B. Exhibit B-3 represents the Mt. Air area and service to the residence at 8485 Sawmill Road.
 - d. Exhibit B-4, attached hereto, is hereby added to Exhibit B. Exhibit B-4 depicts the service area as parcels along the south side of Bevelhymer Road, from New Albany-Condit Road to 8430 Bevelhymer Road inclusive. The maximum diameter water tap for these parcels shall be one inch. Water taps larger than one inch shall not be included in the area reserved for water utility service by Del-Co, but shall be eligible for water utility service by Columbus. If any parcel is rezoned, the newly rezoned parcel shall not be included in the area reserved for water utility service by Del-Co but shall be eligible for water utility service by Columbus. If Columbus elects not to provide water utility service for any such parcel(s), Del-Co may provide such service, in which case the change to the boundaries of Exhibit B-4 will be included as a written modification to this Agreement.

- e. Service by Del-Co to the areas depicted as within Del-Co's service area in Exhibits B-2, B-3, and B-4, all as attached hereto, is expressly ratified by this Modification.
- 3. The reservations set forth in Items 1 and 2 above shall not be construed as imposing any obligation on Del-Co to provide service to any of its service area in Franklin County not currently served, and that Columbus is not obligated to provide service to any of its service area in Delaware County not currently served. Each can consent to the other providing service in part of its designated service area. This shall only be accomplished by future modifications amending the parties' respective service areas. Future modifications amending the parties' respective services areas and affecting only Columbus and Del-Co shall not require approval of the Court, the City of Dublin, or the City of Westerville.
- 4. It is understood and agreed by and between Columbus and Del-Co that the terms and conditions of the original settlement agreement shall remain binding and in full force and effect, and that the only purpose of this Modification is to revise and clarify the service boundaries between the two parties; otherwise the terms and conditions of the original settlement agreement still apply.

THE CITY OF COLUMBUS

By: _____
Director of Public Utilities

Date: _____

DEL-CO WATER COMPANY, INC.

By: _____
President

Date: _____

APPROVED AS TO FORM:

City Attorney
City of Columbus