

AMENDMENT TO TERMS AND CONDITIONS OF CONTRACT
FOR WATER UTILITY SERVICES BETWEEN THE CITY OF COLUMBUS
AND
THE SOLID WASTE AUTHORITY OF CENTRAL OHIO

This Contract made pursuant to Resolution No. _____ adopted by the Solid Waste Authority of Central Ohio, hereinafter "SWACO," authorizing its Executive Director to enter into this Contract and pursuant to Ordinance No. _____ passed and approved by the City of Columbus, Ohio, hereinafter "the City," authorizing its Director of Public Utilities to enter into this Contract is hereby made and entered into between the City, a municipal corporation, and SWACO, a regional solid waste authority established pursuant to Section 343.011 of the Ohio Revised Code this _____ day of _____, 2007.

Whereas, the parties hereto on August 1, 1997 did enter into a contract for residential water utility services pursuant to Resolution No. 36-97 adopted by the Solid Waste Authority of Central Ohio (hereinafter "SWACO") and pursuant to Ordinance No. 1602-97 passed and approved by the Council of the City of Columbus (hereinafter "City"); and

Whereas, the City and SWACO supplemented the terms and conditions of said Water Service Agreement on September 16, 1999 to further clarify the terms and conditions which affect the operations of the water distribution system in the Supplement to Terms and Conditions of Contract for Water Utility Services Between the City of Columbus and the Solid Waste Authority of Central Ohio; and

Whereas, the Parties to the Water Utility Services Agreement desire to set forth terms and conditions for the provision of commercial or industrial water utility service in the delineated water service area.

Now Therefore, the following terms and conditions which are contained herein shall be, and the same are hereby acknowledged by the parties to be part of the terms and conditions of the contract between the parties to the fullest extent of all other terms and conditions thereof and collectively shall be referred to herein as the "Contract."

WITNESSETH:

- 1) Nothing in this Contract shall be deemed to supersede, modify, alter, amend, change or replace any terms or conditions contained in the Water Service Agreement or the Supplement to Terms and Conditions of Contract for Water Utility Services unless specifically set forth in this Contract.
- 2) Section 8 of the Supplement to the Water Service Agreement is hereby deleted and replaced in its entirety with the following:
- 3) Section 8. No property receiving water utility services from SWACO shall be required to annex into any municipal corporation as a precondition of receiving water

utility services from SWACO. Except as set forth below, SWACO shall have no right or ability to grant a water service tap to any property utilized for commercial, industrial or multi-family purposes. The parties hereto recognize and agree that SWACO's system may provide residential services to any single-family residential property located within SWACO's water service area as delineated in the map attached hereto as Exhibit A, and incorporated herein by reference. Should any residential property serviced by SWACO's water distribution system annex or be annexed into any municipal corporation, then that residential property shall require water utility services from such municipal corporation, and its connection with SWACO's water system shall be terminated forthwith. Any property which applies for and receives water from any municipal corporation shall be deemed to be a part of that municipal corporation's water service area irrespective of whether the property shall have annexed to the municipal corporation, and shall receive water utility service solely from such municipal corporation. Upon receipt of water utility services from any municipal corporation the services provided by SWACO shall terminate forthwith. SWACO may provide water service for non-residential uses only in accordance with the following:

- a) SWACO may provide, and the City shall allow, water service to SWACO's owned premises from the SWACO water distribution system, but only for purposes necessary or incident to the functions and operations of SWACO as a regional solid waste authority pursuant to Ohio R.C. Chapters 343 and 3734, or for purposes contained in its solid waste management plan as the same may be amended from time to time.
- b) SWACO may provide, and the City shall allow, the provision of water service for any other commercial or industrial uses only in accordance with the following requirements:
 - i) The commercial or industrial use must be such that its operation is dependant on being in close proximity to the Franklin County Sanitary Landfill and, therefore, the commercial or industrial entity cannot be located elsewhere.
 - ii) Prior to discussions with any prospective commercial or industrial entity, SWACO must obtain the written approval of the Director of Public Utilities (hereinafter "Director") authorizing SWACO to offer the possibility of the provision of water service from the SWACO water distribution system to each prospective commercial or industrial entity.
 - iii) Each new commercial or industrial use must be approved in writing by the Director. Approval is based on the Director's sole discretion in considering the sufficiency of the SWACO water distribution system for the proposed use, the advisability of locating the proposed use at the SWACO site, and any other factors which the Director deems relevant. The Director may approve or deny a proposed commercial or industrial use irrespective of his or her approval under section 8(b)(ii) above. The Director's approval will specify the date by which the proposed commercial or industrial use must begin operation. This date may be modified only upon the written approval of the Director in his or her sole discretion. If operation is not begun by the specified or modified date, the Director's approval is automatically withdrawn.

- c) SWACO shall require each commercial or industrial entity to pay to SWACO an Environmental Development Initiation Fee (hereinafter "Fee"), the purpose of which is to encourage economic development. The Fee is not, and shall not be construed as, a utility extension fee. The amount of the Fee shall be the greater of the following: two percent (2%) of the gross annual payroll for the facility receiving water service from SWACO or \$10,000.
 - i) The Fee shall be required annually during such time as the commercial or industrial facility receives water service. SWACO shall then annually remit the entire payment received from the commercial or industrial entity to the City. The Fee shall not be reduced for any reason.
 - ii) In order to determine the amount of the Fee, each approved commercial or industrial entity shall report to the Director its level of employment including the following:
 - (1) The user's total number of employees at the facility
 - (2) The user's total payroll for employees at the facility
 - iii) The reporting required in section 8(b)(iv)(2) above shall done be at the frequency specified by the Director.
 - iv) The Director shall have the power and privilege to audit the books and records of each approved commercial or industrial user as they pertain to the Fee. Such books and records shall be made available to the Director or his or her designee upon reasonable notice.
 - v) SWACO may require, in addition to the Fee, an administrative payment which shall not be required to be remitted to the City.
- d) Provision of water service by SWACO may only take place within the Authority's Service Area, identified in Exhibit B.
- e) The City shall authorize a water service tap to the SWACO water distribution system for each approved commercial or industrial entity. All water service taps shall be installed under the supervision of the City.
- f) Each commercial and industrial entity shall be required to remit directly to the City any system capacity, tap fees, storm water fees or any other fees normally incident to the City's operation of a water utility system.

WITNESSES:

SOLID WASTE AUTHORITY OF
CENTRAL OHIO

By: _____

Its: _____

Date: _____

WITNESSES:

CITY OF COLUMBUS, OHIO

By: _____

Its: _____

Date: _____