

**FIRST MODIFICATION OF THE ORGANIC WASTE PROCESSING  
AGREEMENT BY AND BETWEEN  
THE SOLID WASTE AUTHORITY OF CENTRAL OHIO,  
THE CITY OF COLUMBUS AND KURTZ BROTHERS, INC.**

On this \_\_\_\_ day of September, 2006, the Solid Waste Authority of Central Ohio pursuant to Resolution 85-06 ("SWACO"), The City of Columbus pursuant to Ordinance XXX-06, ("City"), and Kurtz Brothers, Inc. ("Associate") (hereinafter collectively known as the "Parties"), do hereby enter into this modification of the Organic Waste Processing Agreement (the "Agreement") previously entered into by the parties dated September 1, 2005.

WHEREAS, the Agreement entered into previously by the parties provides that SWACO shall pay Associate for Yard Waste Processing Services rendered pursuant to the Agreement, that the City shall pay Associate for providing Processing Services for Sewerage Sludge and that SWACO shall pay the City for Yard Waste processed at the City's Comtill Facility; and

WHEREAS, due to the increased rate of yard waste receipts received by Associate, the total amount to be paid to the Associate by SWACO for yard waste processing services needs to be increased by TWO MILLION, ONE HUNDRED THOUSAND DOLLARS (\$2,100,000.00) to cover SWACO's obligation under the Agreement; and

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

1. The foregoing recitals are incorporated herein by reference as if fully restated.
2. Nothing in this "First Modification Of The Agreement Between The Solid Waste Authority Of Central Ohio, The City of Columbus, and Kurtz Brothers, Inc." shall be deemed to supersede, modify, alter, amend, change or replace any of the terms, conditions or provisions contained in the Agreement unless specifically set forth herein.
3. Effective as of the date first set forth above, the parties hereby agree that the following paragraph shall be inserted into the Agreement as Article 3.1.16.5
  - 3.1.16.5 Notwithstanding any other term, condition or provision of this Agreement or amendments or modifications hereto, the maximum financial obligation of SWACO under this Agreement to pay the Associate for Yard Waste Processing Services shall not exceed TWO MILLION, ONE HUNDRED THOUSAND DOLLARS (\$2,100,000.00).

4. Effective as of the date first set forth above, the parties hereby agree that the following paragraphs shall be inserted into the Agreement as Articles 4.15.1, 4.15.2 and 4.15.3:

4.15.1 The Parties understand and agree that any modification to Article 3.1.16.5 that increases SWACO's maximum financial obligation to compensate Associate for Yard Waste Processing Services shall be effective upon the execution of a written modification to this Agreement approved by SWACO and the Associate only. No modification related solely to the maximum financial obligation of SWACO to Associate for Yard Waste Processing Services shall require the consent or approval of the City, however no such modification shall be effective until SWACO and the Associate provide the City with both written notice and an executed copy of such modification.

4.15.2 The Parties understand and agree that any modification to this Agreement that increases the City's maximum financial obligation to compensate the Associate for performing Processing Services for Sewerage Sludge shall be effective upon the execution of a written modification to this Agreement approved by the City and the Associate only. No modification related solely to the maximum financial obligation of the City to Associate for performing Processing Services for Sewerage Sludge shall require the consent or approval of SWACO, however no such modification shall be effective until the City and Associate provide SWACO with both written notice and an executed copy of such modification.

4.15.3 The Parties understand and agree that any modification to this Agreement that increases SWACO's maximum financial obligation to compensate the City for processing Yard Waste at the City Comtil Facility shall be effective upon the execution of a written modification to this Agreement approved by SWACO and the City only. No modification related solely to the maximum financial obligation of SWACO to the City for the processing of Yard Waste shall require the consent or approval of Associate, however no such modification shall be effective until SWACO and the City provide the Associate with both written notice and an executed copy of such modification.

4. Effective as of the date first set forth above, the parties hereby agree that Article 1.1(Q) shall be modified to reflect the following:

Article 1.1(Q). Start-Up shall be defined as that period when construction of the OWRRS Facility is substantially complete, the primary equipment is substantially installed, and the facility is commercially available for organic processing services. Start-up shall occur by December 1, 2009, or sooner.

5. Effective as of the date first set forth above, the parties hereby agree that Article 3.3.4 shall be modified to reflect the following:

Article 3.3.4. Associate shall be required to have the OWRRS Facility in operation by December 1, 2009, or sooner.

6. Effective as of the date first set forth above, the parties hereby agree that Article 2.2. shall be modified to reflect the following:

Article 2.2. This Agreement shall be effective on the 1<sup>st</sup> day of September 2005, and shall terminate on the 31<sup>st</sup> day of May 2018. At the Associate's option, the contract may be extended for one additional five (5) year period.

IN WITNESS WHEREOF, and effective as of the date first above written, the parties hereto have executed this "First Modification To The Contract Between The Solid Waste Authority Of Central Ohio, The City of Columbus, and Kurtz Bros., Inc." on the date first above written.

**SOLID WASTE AUTHORITY OF CENTRAL OHIO**

\_\_\_\_\_  
Michael D. Long, P.E.  
Executive Director

**CITY OF COLUMBUS**

\_\_\_\_\_  
Cheryl L. Roberto,  
Director  
City of Columbus, Director of Public Utilities

**KURTZ BROS., INC.**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved As To Form:**

**Approved As To Form:**

\_\_\_\_\_  
Harold J. Anderson III

Richard C. Pfeiffer, Jr.

Chief Counsel  
Solid Waste Authority of Central Ohio

City Attorney  
City of Columbus, Ohio