

AGREEMENT BETWEEN THE CITY OF COLUMBUS

AND

THE DEL-CO WATER COMPANY, INC.

FOR OPERATION OF THE DEL-CO O'SHAUGHNESSY RAW WATER PUMP STATION

This Agreement made between the City of Columbus, Ohio, a municipal corporation, as authorized by Ordinance No. _____ passed and approved by the City of Columbus, Ohio ("Columbus") and the Del-Co Water Company, Inc. ("Del-Co"), an Ohio non-profit corporation (each individually a "party" and together the "parties"), as authorized and passed by its Board of Directors on _____ is hereby made and entered into effective the ___ day of _____, 2016.

Whereas, Columbus and Del-Co entered into a Settlement Agreement on July 6, 1992, modified by an October 2, 2006 Assignment, pursuant to which Del-Co is allocated eight million gallons per day (mgd) from the total capacity of Columbus's Upground Reservoir Facility; and

Whereas, pursuant to the Settlement Agreement, Columbus and Del-Co entered into a Reimbursement Agreement associated with the construction of the Upground Reservoir Facility on September 24, 2012 (the "Reimbursement Agreement"); and

Whereas, the Reimbursement Agreement contemplated that Del-Co may receive its allocation from the Upground Reservoir Facility via a raw water pipeline and pumping facility on the Scioto River, and pursuant to the Reimbursement Agreement, Columbus has granted, at no cost to Del-Co, a permanent easement (the "Easement") across its property as necessary for the construction, operation, and maintenance of such waterline, pumping facility and utilities to serve the pumping facility (the "Premises"); and

Whereas, Columbus and Del-Co wish to supplement the Reimbursement Agreement to formalize operations between the parties.

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

1. Safe Yield Allocation

- a. According to the terms of the Reimbursement Agreement:
 - i. A daily average safe yield of 4.5 mgd (total allocation of 1.64 BGal per calendar year) out of its total allocation of 8 mgd is allocated to Del-Co from reservoir R-2, now called the Doutt Reservoir, the first reservoir constructed within the Upground Reservoir Facility. The facility as designed may include three separate reservoirs.

- ii. Del-Co may request to increase its allocation from reservoir R-2 or from reservoir R-2 and the next constructed reservoir through additional payment by Del-Co to Columbus for Del-Co's pro rata share of the project costs associated with construction and operation of the then constructed reservoir(s) (an "Acceleration"); and
 - iii. A total maximum safe yield of 8 mgd (total allocation of 2.92 BGal per calendar year) will be allocated to Del-Co from the Upground Reservoir Facility upon construction of both of the two designed additional upground reservoirs, or at any time Del-Co elects to increase its allocation from the then completed reservoirs pursuant to the "Acceleration" clause of the Reimbursement Agreement.
- b. Columbus and Del-Co agree that:
- i. The applicable annual safe yield allocation for Del-Co is available for withdrawal beginning on January 1 and ending on December 31 of each calendar year.
 - ii. Portions of the annual safe yield allocation that are not withdrawn by Del-Co in a given calendar year do not carry over to increase the total available allocation in the next calendar year.

2. Del-Co Pumping Facilities and Rates of Withdrawal from the Scioto River System

- a. The Del-Co pumping facilities will be designed with an initial maximum diversion rate of 16 mgd from the O'Shaughnessy Reservoir, based upon the total annual allocation of 1.64 BGal. The following operational scenario has been developed for Del-Co's annual withdrawal allocation of 1.64 BGal, based on observed O'Shaughnessy Reservoir pool levels and a maximum pumping rate of 16 mgd. Del-Co's permitted withdrawal rates until such time that its entire maximum annual allocation is attained, are:
- i. Up to 16 mgd during periods when the O'Shaughnessy Reservoir is at 100% capacity (pool level is at 848.5 MSL) and water is flowing over the O'Shaughnessy dam. No stored water will need to be released from the Upground Reservoir Facility.
 - ii. Up to 16 mgd when the O'Shaughnessy Reservoir is at 80% capacity or greater (pool level between 844.5 MSL -848.5 MSL), as follows:
 - 1. Between September 16 – June 15: No stored water would need to be released from the Upground Reservoirs.
 - 2. Between June 16 – September 15: Del-Co shall coordinate operations with Columbus to increase the rate of release of stored water from the Upground Reservoir Facility to the Scioto River commensurate with Del-Co's actual withdrawal rate.
 - iii. Up to 16 mgd during periods when the O'Shaughnessy Reservoir is below 80% capacity (pool level greater than 835.0 and less than 844.5 MSL); provided that

Del-Co shall coordinate operations with Columbus to increase the rate of release of stored water from the Upground Reservoir Facility to the Scioto River commensurate with Del-Co's actual withdrawal rate.

- iv. No withdrawals when the O'Shaughnessy Reservoir pool level is below Del-Co's raw water intake (pool levels below 835.0 MSL).
- b. Del-Co may elect to increase capacity of pumping facilities in the future to provide a maximum diversion rate of 24 mgd from the O'Shaughnessy Reservoir at such time that Del-Co's total annual allocation increases when additional reservoirs come on-line, or when Del-Co exercises the "acceleration clause" of Section 2 of the Reimbursement Agreement. As long as it does not have a detrimental impact to Columbus' water supply and associated recreational activities in the Scioto River, Del-Co's permitted withdrawal rates based on a withdrawal allocation of 2.92 BGal and a maximum pumping rate of 24 mgd are:
- i. Up to 24 mgd during periods when the O'Shaughnessy Reservoir is at 100% capacity (pool level is at 848.5 MSL) and water is flowing over the O'Shaughnessy dam. No stored water will need to be released from the Upground Reservoir Facility.
 - ii. Up to 24 mgd when the O'Shaughnessy Reservoir is at 80% capacity or greater (pool level between 844.5 MSL -848.5 MSL), as follows:
 - 1. Between September 16 – June 15: No stored water would need to be released from the Upground Reservoir Facility.
 - 2. Between June 16 – September 15: Del-Co shall coordinate operations with Columbus to increase rate of release of stored water from the Upground Reservoir Facility to the Scioto River commensurate with Del-Co's actual withdrawal rate.
 - iii. Up to 24 mgd during periods when the O'Shaughnessy Reservoir is below 80% capacity (pool level greater than 835.0 and less than 844.5 MSL) provided that Del-Co shall coordinate operations with Columbus to increase the rate of release of stored water from the Upground Reservoir Facility to the Scioto River commensurate with Del-Co's actual withdrawal rate.
 - iv. No withdrawals when the O'Shaughnessy Reservoir is below Del-Co's raw water intake (pool levels below 835.0 MSL).
- c. Del-Co and Columbus agree that in the event of extended or multi-year drought conditions which prevent refilling of the Upground Reservoir Facility to normal pool level, the available storage volume present in the Upground Reservoir Facility will be shared based on the percentages of Columbus = 84.6% and Del-Co = 15.4%, or such other percentages as may be applicable if Del-Co has increased its allocation due to an "acceleration" pursuant to Section 2 of the Reimbursement Agreement, and the

withdrawal rates set forth in subsections a. and b. of this Section 2 shall be adjusted accordingly.

3. Notifications and Reporting

- a. Del-Co will apply for and obtain a surface water withdrawal permit from the Ohio Department of Natural Resources (ODNR). Del-Co will provide a hard copy of the ODNR permit to the Columbus DOW Water Supply & Treatment Coordinator, or designee(s), upon receipt.
- b. Del-Co will compile flow meter data and submit a report of the volume of water withdrawn each month. Months when no withdrawals occur shall be reported as such. Monthly reports shall be transmitted via e-mail to the Columbus DOW Water Supply & Treatment Coordinator, or designee(s), by the 10th day of the following month.
- c. Del-Co will prepare and submit the ODNR annual report to ODNR. Del-Co will provide a hard copy of the annual report to the Columbus DOW Water Supply & Treatment Coordinator, or designee(s).
- d. Del-Co will notify Columbus by email to the Columbus DOW Water Supply & Treatment Coordinator, or designee(s) of its intent to initiate pumping operations. Notifications shall be as follows:
 - i. At least 24 hours advance notice prior to pumping that does not require release of stored water from the Upground Reservoir Facility.
 - ii. At least 5 days advance notice if sustained pumping that will require the release of stored water from the Upground Reservoirs is needed in accordance with section 2 of this Agreement.

4. Use of Premises

- a. Del-Co's use of the Premises shall be in accordance with the Easement, the terms of which are hereby incorporated into this Agreement and shall be limited to those uses and activities permitted by the Easement.
- b. Del-Co is required to first obtain Columbus's prior, written consent if Del-Co desires to use the Premises for uses other than those permitted by the Easement; however, Columbus's consent is at Columbus's sole discretion.
- c. At Del-Co's cost, Del-Co is exclusively responsible for the design, construction and operation of its raw water pipeline and pumping facilities; including providing utilities which include but are not limited to heating, cooling, electric, or gas on the Premises, with the exception of the following:
 - i. Extension of the debris boom south of the intake structure desired by Columbus
- d. Del-Co is responsible for maintenance and housekeeping activities within the facility perimeter fencing, including the fence, and in the immediate vicinity of its raw water

intake structure. This includes the debris boom at the intake structure. Columbus is responsible for maintenance and housekeeping activities beyond these specified limits, including any extension of the debris boom south of the intake structure by Columbus.

- e. Del-Co is responsible for all environmental regulatory requirements with respect to the operation and maintenance of its facility.

5. Indemnity and Insurance

- a. Del-Co, for itself and its contractors, employees, agents, and assigns, agrees to protect, indemnify, release, defend and hold Columbus harmless from and against any damage, cost, liability, including reasonable attorneys' fees, arising in connection with, or in any manner arising out of, without limitation, the operation of its facility.
- b. Del-Co shall maintain throughout the term of this Agreement commercial comprehensive general liability insurance in an amount not less than \$2,000,000.00 per occurrence and \$6,000,000.00 aggregately with Columbus as an additional named insured.

6. Miscellaneous Provisions

- a. Del-Co and Columbus agree that a new water intake proposed on the Scioto River system by another entity in the future may require an amendment to this Agreement.
- b. Del-Co and Columbus agree that a new water intake proposed on the Scioto River system by Del-Co in the future may require an amendment to this Agreement.
- c. Del-Co acknowledges that there is no guarantee of water quality within the Scioto River system during periods of withdrawal by Del-Co Water. If Del-Co elects to pump, the treatment/removal of any constituents present, if necessary, is the responsibility of Del-Co.
- d. Del-Co agrees that Columbus is not liable for the physical inability to supply water to Del-Co upon request due to mechanical equipment failure or other circumstances beyond Columbus's control. Columbus agrees that remedial measures will be taken within a reasonable timeframe to restore supply to Del-Co.

7. Termination

- a. This Agreement may be terminated at any time by mutual consent and a written instrument executed by the parties hereto.
- b. In addition, this Agreement may be terminated by either party upon failure of the other party to correct a material breach of this Agreement within thirty days of the other party's receipt of written notice of such breach or such longer time if the nature of the breach reasonably requires such longer time to correct. Del-Co's withdrawal of water in excess of the limitations of this Agreement shall constitute a material breach.

- c. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically upon the termination or release of the Easement
- d. This Agreement may be terminated If any hazardous materials, or chemicals regulated under the Safe Drinking Water Act or any subsequent similar act, are stored on-site in a manner deemed incompatible with their proximity to a water supply reservoir and not removed within five (5) days of Del-Co's receipt of notice from Columbus.
- e. Notices under this section shall be sent to:
 - i. For Columbus: City of Columbus
Department of Public Utilities
Attn: Director
910 Dublin Road
Columbus, Ohio 43215
 - ii. For Del-Co:
Del-Co Water Company, Inc.
Attention: General Manager
6658 Olentangy River Road
Delaware, OH 43015-9211

8. Amendments to Agreement

No modification, amendment, alteration, addition or waiver of any section or condition of this Agreement shall be effective or binding unless it is in writing and signed by authorized representatives of each of Columbus and Del-Co and approved by the appropriate Columbus authorities and the Board of Directors of Del-Co.

9. Assignment

This Agreement may not be assigned or otherwise transferred to others by Del-Co without the prior written consent of Columbus. If this Agreement is so assigned, it shall inure to the benefit of and be binding upon any respective successors and assigns (including successive, as well as immediate, successors and assignees) of Del-Co.

10. Severability

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions for the Agreement are declared severable.

11. Term of Agreement

- a. Unless terminated or amended sooner, the term of this Agreement shall be for ten (10) years after the effective date. Thereafter, this Agreement shall automatically renew for three (3) consecutive five year terms unless notice is given by either party to the other at least ninety (90) days prior to the expiration of the then current term or of any

renewal term terminating this Agreement effective as of the expiration of the then current term.

This Agreement, and the Easement and the Reimbursement Agreement incorporated herein by reference, constitutes the entire understanding and agreement between the parties hereto with respect to the operation of Del-Co’s raw waterline and pump station facilities described herein and there are no agreements, understandings, restrictions or warranties between the parties related to the operation of Del-Co’s raw waterline and pump station facilities described herein other than those set forth herein and in the Easement and the Reimbursement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the date hereinbefore written.

THE CITY OF COLUMBUS

By: _____

Director of Public Utilities

DEL-CO WATER COMPANY, INC.

By: _____

General Manager

APPROVED AS TO FORM:

By: _____

City Attorney

City of Columbus, Ohio