



## Legislation Text

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**File #: 0689-2008, Version: 1**

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**BACKGROUND:** This ordinance authorizes the Director of Public Utilities to enter into a Ninth Modification of the Lease and Transfer Agreement between the City and the Solid Waste Authority of Central Ohio ("SWACO") dated April 1, 1993 (together with the First through Eighth Modifications to that Lease and Transfer Agreement, the "Lease Agreement") in compliance with the Columbus City Charter. The purpose of this Ninth Modification is to reflect SWACO's procurement of a surety bond ("Surety Bond") as a substitute for the monies held in the Debt Service Reserve Account for SWACO's outstanding Series 2004A Facility Acquisition Bonds. The procurement of the Surety Bond will permit the monies previously programmed for those debt service payments to be used for the further payment of the Lease Agreement.

This ordinance is requested to be an emergency measure to allow the Director of Public Utilities to enter into the Ninth Modification of the Lease Agreement at the earliest date possible.

**FISCAL IMPACT:** The Ninth Modification to the Lease Agreement will result in the payment of approximately \$5,299,900 by SWACO to the City, which is to be applied as a further payment of the Lease Agreement.

To authorize the Director of Public Utilities to enter into a Ninth Modification of the Lease Agreement with the Solid Waste Authority of Central Ohio (SWACO) in compliance with the Columbus City Charter and to declare an emergency.

WHEREAS, the City and Solid Waste Authority of Central Ohio ("SWACO") entered into a Lease and Transfer Agreement dated April 1, 1993 (together with the First through Eighth Modifications to that Lease and Transfer Agreement, the "Lease Agreement") to, among other things, transfer possession of the City's Solid Waste Reduction Facility ("Facility") to SWACO as lessee of the Facility and to require that SWACO make lease payments to the City; and

WHEREAS, SWACO collects a \$7.00 per ton fee (the "Fee") from every waste generator in its district, including the City, which Fee is used to pay debt service on the Series 2004A Bonds, and the City applies the amount of its Fee as a credit against SWACO's obligations to make lease payments to the City under the Lease Agreement; and

WHEREAS, the City entered into a Fifth Modification of the Lease Agreement with SWACO dated March 15, 2004 ("Fifth Modification"), in which modification the parties agreed to the sale of bonds by SWACO to retire its deferred obligation to the City and to fund a separate debt service reserve account further securing and pledged solely for the payment of principal of and interest on the Series 2004A Bonds (the "Reserve Account"); and

WHEREAS, the Reserve Account was initially funded in the amount of \$5,299,900 (the "Reserve Amount") from proceeds of the Series 2004A Bonds; and

WHEREAS, the City agreed in the Fifth Modification that if the Reserve Account is drawn upon to pay debt service on the 2004A Bonds and the balance in that Reserve Account at the end of a calendar year is less than the Reserve Amount, the City will pay SWACO its share of the Fee at the end of that year to the extent necessary to replenish the Reserve Account to the Reserve Amount rather than apply the amount of its Fee as a credit against SWACO's obligations to the City under the Lease Agreement; and

WHEREAS, the City and SWACO now desire to enter into a Ninth Modification to the Lease Agreement to reflect the further payment by SWACO of the Lease Agreement and to make provision for the payment of costs incurred for the procurement of the Surety Bond;

WHEREAS, an emergency exists requiring immediate preservation of the public peace, property, health, or safety by allowing the expeditious procurement of the Surety Bond and the subsequent payment of the Reserve Amount by SWACO to the City; now, therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

**Section 1.** That the Director of Public Utilities is hereby authorized to execute the Ninth Modification to the Lease Agreement between the City and the Solid Waste Authority of Central Ohio.

**Section 2.** That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.