AMENDMENT TO THE ENVIRONMENTAL COVENANT AS BETWEEN THE CITY OF COLUMBUS, THE SOLID WASTE AUTHORITY OF CENTRAL OHIO, AND THE OHIO ENVIRONMENTAL PROTECTION AGENCY

2500 JACKSON PIKE
COLUMBUS, OHIO 43223
PARCEL NO. 570-181425

This instrument prepared by:
Danielle Kuskowski
Staff Attorney
Solid Waste Authority of Central Ohio
4239 London Groveport Road
Grove City, Ohio 43123
614.871.5100
AMENDMENT TO THE ENVIRONMENTAL COVENANT

This Amendment to the Environmental Covenant ("Amendment") is entered into by the City of Columbus, Ohio ("Owner"), a municipal corporation, having offices at 90 West Broad Street, Columbus, Ohio 43215, Franklin County, Ohio, Owner of the property located at 2500 Jackson Pike, Columbus, Ohio ("Property"), the Solid Waste Authority of Central Ohio ("Holder"), having offices at 4239 London Groveport Road, Grove City, Ohio 43123, as lessee of the Property, and the Ohio Environmental Protection Agency ("Ohio EPA"), pursuant to Ohio Revised Code ("ORC") §§5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations as set forth herein.

WHEREAS, Owner is the owner of, and Holder is the lessee and operator of, certain real property consisting of a parcel of land, located at 2500 Jackson Pike, Columbus, Franklin County, Ohio, and legally described in Exhibit A hereto (collectively referred to herein as the "Property"); and

WHEREAS, Holder, pursuant to a Closure Plan approved by the Director of Ohio EPA on July 13, 2000, and amended on June 20, 2001, October 15, 2001, October 24, 2001, and April 2, 2002, was required to implement the approved plan, and excavate and remove all materials/wastes in order to properly close the hazardous waste unit known as the former Retention Basin; and

WHEREAS, the closure of the former Retention Basin area was implemented to industrial health-based standards, and a "Closure Certification Report for the Retention Basin at the Waste-to-Energy Facility, 2500 Jackson Pike, Columbus, Franklin County, Ohio 43230" was submitted on behalf of Holder on October 23, 2003; and

WHEREAS, on September 29, 2006, the Ohio EPA issued a closure verification and determination that the Owner and Holder had closed the facility according to the approved closure plan and Ohio Administrative Code (OAC) rules 3745-66-11 through 3745-66-15; and

WHEREAS, the Administrative Record of the hazardous waste closure is maintained as the file titled "SWACO/City of Columbus Waste-to-Energy Facility," (WTEF) which is known by the EPA ID number OHD 986 971 968, in the Ohio EPA Central District Office, Lazarus Government Center, 50 W. Town Street, Suite 700, Columbus, Ohio 43215; and

WHEREAS, as part of the closure activities and in order to maintain non-residential land use, Owner and Holder entered into an environmental covenant with Ohio EPA, dated July 11, 2006, for the 1.643 acre tract of land where the former Retention Basin was located; and

WHEREAS, the Property was used as a WTEF from 1983 to 1995, during which time incineration related activities at the fifty-two (52) acre site occurred within an
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approximately ten (10) acre shallow bowl-shaped area at a ground surface elevation of 692 ft above mean sea level (amsl); and

WHEREAS, as part of a 1996 study conducted by U.S. EPA, dioxins were present in soil above U.S. EPA Regional Screening Levels for residential and industrial soil on the former WTEF property; and

WHEREAS, in 1995, WTEF operations ceased and, in 2004, following the demolition and cleaning of major components of the incineration equipment, the ten (10) acre “bowl” area at which incineration related activities occurred was filled with quarry fines; and

WHEREAS, filling of the bowl area brought the elevation of the property to approximately 709 ft amsl and covered the majority of the site’s waste management units with between nineteen (19) and thirty-seven (37) feet of quarry fines; and

WHEREAS, after inclusion on the April 2007 list of RCRA facilities known as the U.S. EPA’s “2020 Universe,” Owner and Holder met with U.S. EPA representatives and agreed to prepare a Current Conditions Report (“CCR”) under the RCRA Corrective Action program, which was submitted to U.S. EPA on April 28, 2011; and

WHEREAS, pursuant to the recommendations of the CCR, and as supported by U.S. EPA, Owner, and Holder (“Parties”) have agreed to (1) amend the July 11, 2006 Environmental Covenant previously entered into as between the Parties to include entire parcel of the Property, and (2) impose on the subject Property activity and use limitations as covenants that will run with the land for the purpose of protecting human health and the environment;

WHEREAS, as part of the corrective action obligations pertaining to the Property pursuant to Ohio hazardous waste requirements contained in ORC Chapter 3734, Owner has agreed to placing the activity and use limitations on the Property, as described herein.

NOW THEREFORE, Owner, Ohio EPA, and Holder agree to the following:

1. Definitions. All capitalized terms shall have the definitions identified herein. A capitalized term in this Environmental Covenant which is not defined herein shall have the same meaning as set forth in ORC §§5301.80 to 5301.90 or as provided in RCRA.


(b) Holder means the Solid Waste Authority of Central Ohio (SWACO), whose address is listed above, and its successors and assigns.

(c) Industrial/Commercial Activities includes, but is not limited to:
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(i) wholesale and retail sales and service activities, including, but not limited to retail stores and automotive fuel, sales, and service facilities,

(ii) governmental, administrative, and general office activities,

(iii) manufacturing, processing, packaging, handling, and warehousing activities, including, but not limited to production, storage, and sales of durable and non-durable goods and other products,

(iv) research and development, including all ancillary and support activities incident thereto,

(v) other office and warehousing activities, including, but not limited to production, processing, storage, and sales of chemicals, chemical intermediates, blend-stocks, feed-stocks and/or by-products, or durable goods, and

(vi) activities which are consistent with or similar to the above listed activities together with related parking areas and driveways, but shall exclude Residential and Other Prohibited Activities.

(d) **Owner** means the City of Columbus, whose address is listed above, and its successors and assigns.

(e) **Residential and Other Prohibited Activities** includes, but is not limited to:

   (i) single and multi-family dwellings and rental units,

   (ii) day care centers and preschools,

   (iii) educational and religious facilities,

   (iv) hospitals, assisted living, and other extended care medical facilities, medical and dental offices,

   (v) restaurants and other food and beverage services (e.g., food stores, restaurants, and banquet facilities),

   (vi) indoor or outdoor entertainment and recreational facilities,

   (vii) hotels and motels,

   (viii) transient or other residential facilities.

(f) **Transferee** means any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees but excluding the Ohio EPA or U.S. EPA.

2. **Amendment to the Environmental Covenant.** This instrument serves as an amendment to the Environmental Covenant previously developed and executed.
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by the Parties pursuant to ORC §§5301.80 to 5301.92, and recorded July 20, 2006. Owner and Holder join this Amendment in order to subject their respective interests in the Property to the terms of this instrument, which it may now or hereafter hold.

3. Property and Restricted Area. This Amendment concerns the fifty-two (52) acre tract of real property located at 2500 Jackson Pike, in Columbus, Franklin County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property"). The Property shall be subject to the activity and use limitations as provided for herein. The "Restricted Area," attached hereto and described in Exhibit B, is subject to disturbance limitations as provided for herein.

4. Activity and Use Limitations. As part of the closure of a hazardous waste management unit and the corrective action remedy for waste management units previously entered into, and as provided for in this Amendment, Owner hereby imposes and agrees to comply with the following activity and use limitations:

   (a) Land Use Limitation. The Property is limited to industrial and commercial use only, as defined in part (1)(c) above. The Property shall not be used for agricultural or Residential and Other Prohibited Activities as defined in part (1)(e) above.

   Any future use of the Property must be protective of human health and the environment.

   (b) Groundwater Limitation. Groundwater located within or upon the Property shall not be used except for investigation, monitoring, or remediation purposes, or in conjunction with construction, mining, or excavation activities.

   (c) Disturbance Limitation. Excavation within the Restricted Area, as identified in Exhibit B, to elevations less than 692 ft mean sea level (msl) is prohibited except in conjunction with an excavation plan which includes a copy of this Amendment, describes health and safety protection measures to be implemented, and requires that soil and fill material excavated from elevations less than 692 ft msl are disposed in accordance with State and federal requirements. This limitation does not apply to underground mining.

5. Running with the Land. This Amendment shall be binding upon Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC §5301.85, subject to amendment or termination as set forth herein.

6. Compliance Enforcement. Compliance with this Amendment may be enforced pursuant to ORC §5301.91 or other applicable law. Failure to timely enforce compliance with this Amendment or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any noncompliance. Nothing in this
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Amendment shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

7. **Rights of Access.** Owner hereby grants to Access Grantees and Holder the right of access to the Property for any action authorized by law, any action related to implementation, oversight, or enforcement of this Amendment, and shall require such access as a condition of any transfer of the Property or any portion thereof.

8. **Compliance Reporting.** Owner or any Transferee shall submit to Ohio EPA and Holder on an annual basis before June of each year (starting June 2018) written documentation which complies with the requirements of OAC rule 3745-50-42(B) through (D) verifying that the activity and use limitations remain in place and are being complied with.

9. **Notice upon Conveyance.** Each instrument hereafter conveying any interest in the Property, or any portion thereof, shall contain a notice of the activity and use limitations as set forth in this Amendment, and provide the recorded location of said Amendment. The notice shall be substantially in the following form, and shall contain the land use and groundwater restrictions and disturbance limitations as detailed herein:

   THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED ________, 20__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE FRANKLIN COUNTY RECORDER ON ________, 20__ IN [DOCUMENT __, or BOOK __, PAGE __].

Owner or Transferee, or Holder in the case of sublease of its lease, shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. Such notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, the legal description of the Property being transferred, a survey map that shows the boundaries of the property being transferred, and the closing date of the transfer of ownership of the Property.

10. **Representations.** Owner hereby represents and warrants that:

   (a) Owner is the sole owner of the Property;

   (b) Owner holds fee simple title to the Property which is subject to the interests or encumbrances identified in Exhibit C attached hereto and incorporated by reference herein;

   (c) Owner has the power and authority to enter into this Amendment, grant the rights and interests herein provided, and carry out all obligations hereunder;

   (d) Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and has notified such persons of Owner’s intention to enter into this Environmental Covenant; and

   (e) this Environmental Covenant will not materially violate, contravene, or constitute a material default under any other agreement, document, or
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instrument to which Owner is a party or by which Owner may be bound or affected.

11. Amendment or Termination. This Amendment may be amended or terminated by written consent of all of the following: Owner or a Transferee, Holder, and the Ohio EPA pursuant to ORC §§5308.82, 5301.90, and other applicable law. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Amendment, the Owner or Transferee shall file such instrument for recording with the Franklin County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

"Amendment," as used herein, shall mean any changes to this Amendment, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitation when there is at least one limitation remaining. "Termination," as used herein, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Amendment.

12. Severability. If any provision of this Amendment is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law. This Amendment shall be governed by and interpreted in accordance with the laws of the State of Ohio.

14. Recordation. Within thirty (30) days after the date of the final required signature upon this Amendment, Owner shall file said for recording, in the same manner as a deed to the Property, with the Franklin County Recorder's Office pursuant to ORC §5301.88. Owner shall certify to Ohio EPA that this Amendment has been filed for recording, and include with the certification a file- and date-stamped copy of the Amendment.

15. Effective Date. The effective date of this Amendment shall be the date upon which the fully executed Amendment has been recorded as a deed record for the Property with the Franklin County Recorder.

16. Distribution of Amendment. Owner shall distribute copies of the recorded Amendment to: Ohio EPA, the Holder, any lessee, each person who signed the Environmental Covenant and/or the Amendment, each person holding a recorded interest in the Property, each unit of local government in which the real property is located, and any other person so designated by Ohio EPA.

17. Notice. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

Unless otherwise notified in writing by Ohio EPA, any document or communication required by this Amendment shall be submitted to:

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As to Ohio EPA:

Ohio EPA – Central Office  
Division of Environmental Response and Revitalization  
Attn: DERR Records Management Officer  
PO Box 1049  
Columbus, Ohio 43216-1049

Ohio Environmental Protection Agency  
Central District Office  
Division of Environmental Response and Revitalization  
Attn: Site Coordinator for SWACO Site  
Lazarus Government Center  
50 W. Town Street, Suite 700  
Columbus, Ohio 43215

As to Owner:

City of Columbus  
Department of Public Utilities  
Attn: Director  
910 Dublin Road  
Columbus, Ohio 43215

As to Holder:

Solid Waste Authority of Central Ohio  
Attn: Executive Director  
4239 London Groveport Road  
Grove City, Ohio 43123

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

The undersigned representatives of Owner and Holder(s) represent and certify that they are authorized to execute this Environmental Covenant.
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IT IS SO AGREED:

OWNER: THE CITY OF COLUMBUS

[Signature]

State of Ohio

) ss:

County of Franklin

Before me, a notary public, in and for said county and state, personally appeared TRACIE DAVIES, a duly authorized representative of The City of Columbus, who acknowledged to me that he or she did execute the foregoing instrument on behalf of The City of Columbus.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 28 day of June, 2017.

[Notarial Seal]

LUBINA C. BROWNING
Notary Public, State of Ohio
My Commission Expires 05-04-2021

HOLDER: SOLID WASTE AUTHORITY OF CENTRAL OHIO

[Signature]

Executive Director

State of Ohio

) ss:

County of Franklin

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Before me, a notary public, in and for said county and state, personally appeared

[Signature]

a duly authorized representative of The Solid Waste Authority of Ohio, who acknowledged to me that he or she did execute the foregoing instrument on behalf of The Solid Waste Authority of Ohio.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 5th day of July, 2017.

[Notary Seal]

Notary Public

THE OHIO ENVIRONMENTAL PROTECTION AGENCY

State of Ohio )

) ss:

County of Franklin )

Before me, a notary public, in and for said county and state, personally appeared Craig W. Butler, Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1st day of August, 2017.

[Notary Seal]

Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

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May 19, 2019
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Former Waste to Energy Facility – 2500 Jackson Pike, Columbus

This instrument prepared by:

Danielle Kuskowski
Staff Attorney
Solid Waste Authority of Central Ohio
4239 London Groveport Road
Grove City, Ohio 43123
614.871.5100
BLUE-J SURVEYING, LLC  
14450 State Route 56 West  
Mount Sterling, Oh 43143  
PH. 614-774-8577

Description of a 52.087 Acre Tract

Situate in the State of Ohio, County of Franklin, Township of Jackson, City of Columbus, being part of Virginia Military Survey Nos. 424, 4312 and 9264 and being all of a 52.087 acre tract being conveyed to the City of Columbus, Ohio, by deed of record in Deed Book 3738, Page 791, all records herein are from the Recorder’s Office, Franklin County Ohio, said 52.087 acre tract being more particularly described as follows:

BEGINNING, at a point in the centerline of State Route 104 (Jackson Pike), said point also being the northwest corner of said 52.087 acre tract and the southwesterly corner of a 147.84 acre tract being conveyed to the City of Columbus, Ohio, by deed of record in Deed Book 389, Page 183;

Thence South 73°12'24" East a distance of 1375.00 feet, along the line common to said 52.087 acre tract and said 147.84 acre tract, passing an iron pin set at a distance of 30.00 feet, to a ¾" iron pin found at the northeast corner of said 52.087 acre tract, a northerly corner of a tract conveyed to Columbus Limestone, LLC, by deed of record in Instrument Number 200206200532277 and in the south line of said 147.84 acre tract;

Thence South 28°46'06" West a distance of 1829.48 feet, passing an iron pin found at a distance of 1450.02 feet, to an iron pin set at the southeast corner of said 52.087 acre tract;

Thence North 61°13'54" West a distance of 1345.08 feet, passing a ¾" iron pin found at a distance of 990.12 feet, at the northeast corner of a 15.212 acre tract being conveyed to Jackson Pike Investors, by deed of record in Instrument Number 201407300098614 and passing a ¾" iron pin found at a distance of 1315.05 feet, to a point in the centerline of said State Route 104;

Thence North 28°46'06" East a distance of 1544.19 feet, along the centerline of said Jackson Pike to the point of beginning containing 52.087 acres more or less. Being subject to all easements, restrictions and rights-of-way of record.
Bearings are based on the centerline of State Route 104 as being North 28°46'06" East, as shown in Deed Book 3738, Page 791, at the Recorder’s Office Franklin County, Ohio.

All set iron rebar are 5/8 inch, 30 inch long having a yellow I.D. cap stamped "BLUE 8382".

The description is based on an actual field survey as performed by Blue-J Surveying LLC in April, 2017 under the direct supervision of Jennifer L. Blue, Registered Surveyor No. 8382.

BLUE-J SURVEYING, LLC

[Signature]

Jennifer L. Blue, P.S. 8382  Date
Exhibit A Survey Figure.
Description of a 9.152 Acre Tract

Situative in the State of Ohio, County of Franklin, Township of Jackson, City of Columbus, being part of Virginia Military Survey Nos. 424, 4312 and 9264 and being part of a 52.087 acre tract being conveyed to the City of Columbus, Ohio, by deed of record in Deed Book 3738, Page 791, all records herein are from the Recorder’s Office, Franklin County Ohio, said 52.087 acre tract being more particularly described as follows:

BEGINNING, at a point in the centerline of State Route 104 (Jackson Pike), said point also being the northwest corner of said 52.087 acre tract and the southwesterly corner of a 147.84 acre tract being conveyed to the City of Columbus, Ohio, by deed of record in Deed Book 389, Page 183;

Thence South 73°12’24” East a distance of 353.88 feet, along the line common to said 52.087 acre tract and said 147.84 acre tract, passing an iron pin set at a distance of 30.00 feet, to a point in the line common to said 52.087 acre tract and said 147.84 acre tract;

Thence the following 9 courses and distances over and across said 52.087 acre tract

1. South 16°47’36” West, a distance of 108.35 feet, to the TRUE POINT OF BEGINNING;
2. South 73°19’34” East a distance of 431.48 feet, to a point;
3. South 07°00’12” West a distance of 287.52 feet, to a point;
4. South 28°38’06” West a distance of 541.51 feet, to a point;
5. North 61°24’52” West a distance of 480.00 feet, to a point;
6. South 28°25’34” West a distance of 29.99 feet, to a point;
7. North 61°35’06” West a distance of 26.35 feet, to a point;
8. North 16°25'53" West a distance of 43.50 feet, to a point;

9. North 29°20'51" East a distance of 719.20 feet, to the TRUE POINT OF BEGINNING, containing 9.152 acres more or less. Being subject to all easements, restrictions and rights-of-way of record.

Bearings are based on the centerline of State Route 104 as being North 28°46'06" East, as shown in Deed Book 3738, Page 791, at the Recorder’s Office Franklin County, Ohio.

All set iron rebar are 5/8 inch, 30 inch long having a yellow I.D. cap stamped “BLUE 8382”.

The description is based on an actual field survey as performed by Blue-J Surveying LLC in April, 2017 under the direct supervision of Jennifer L. Blue, Registered Surveyor No. 8382.

BLUE-J SURVEYING, LLC

Jennifer L. Blue, P.S. 8382 Date
Exhibit B Survey Figure
Encumbrances to the Property

1. **Solid Waste Authority of Central Ohio**
   
   a. **Sublease Tenant:** Kurtz Brothers of Central Ohio  
      Sublease Agreement between the Solid Waste Authority of Central Ohio, as Sublessor, and Kurtz Brothers Central Ohio, LLC, as Sublessee, for Premises at 2500 Jackson Pike Road, Columbus, Ohio (March 2009)
   
   b. **Sublease Tenant:** Kurtz Brothers of Central Ohio  
      Agreement Regarding Lease with Option to Purchase/Sale of Jackson Pike Building and Sublease of Premises (December 13, 2011)

2. **American Aggregates Corporation**, an Ohio corporation, or its successors and assigns.
   American Aggregates Corporation, or its successors and assigns, is holder of certain easements pursuant to the reservation of easements in a Warranty Deed from American Aggregates Corporation to the City of Columbus, Ohio, recorded July 17, 1979 in Deed Book Volume 3738, Page 791, Recorder’s Office, Franklin County, Ohio.