

Proposed Form of Satellite Sewer System Agreement
Pursuant to Paragraph 13 of Consent Decree

Agreement between
The City of Columbia
and
[Satellite Sewer System Owner]

This Agreement is made and entered into to be effective as of this ____ day of _____, 20__ (the “Effective Date”), by and between the City of Columbia, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina (“Columbia”) and **[Satellite Sewer System Owner (“SSS Owner”)]** (hereinafter Columbia and **[SSS Owner]** jointly referred to as the “Parties”).

WHEREAS, Columbia owns, operates and maintains a wastewater sewer system (“Columbia Sewer System”) which includes a wastewater collection and transmission system (“Columbia WCTS”) and a wastewater treatment plant located as 1200 Simon Tree Lane, Columbia, South Carolina (“Metro WWTP”). The Metro WWTP is permitted to discharge treated wastewater pursuant to NPDES Permit No. SC0020940 (“City Permit”) issued by the South Carolina Department of Health and Environmental Control (“DHEC”); and

WHEREAS, **[SSS Owner]** owns, operates and maintains a satellite sewer system as defined in S.C. Regulation 61-9.122.2 (“Satellite Sewer System”) and currently transmits wastewater collected in the Satellite Sewer System to the Columbia Sewer System for transmission to the Metro WWTP for treatment and discharge to waters of the State under the City Permit;

[INCLUDE IF APPLICABLE] WHEREAS, one or more facilities located in the Satellite Sewer System are Industrial Users as defined by S.C. Regulation 61-9.403.3; and

[INCLUDE IF APPLICABLE] WHEREAS, pursuant to S.C. Regulation 61-9.403, Columbia must implement and enforce a pretreatment program to control discharges from all Industrial Users to the Metro WWTP, including Industrial Users in the Satellite Sewer System.

NOW, THEREFORE, for and in consideration of the agreements and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

SERVICES AND FEES

1. Services Provided. **[Recitation of services to be provided by Columbia].** Columbia shall issue to **[SSS Owner]** a permit authorizing the discharge of wastewater collected and transmitted in the Satellite Sewer System to the Columbia Sewer System for transmission to

and treatment at the Metro WWTP. The terms of this Agreement shall be incorporated into the permit, and compliance with the terms of this Agreement shall be a permit condition.

2. Fees. [Terms of fees to SSS Owner for services, including surcharge for exceeding maximum flow and reimbursement for penalties imposed on City for sanitary sewer overflows caused by satellite sewer system flow].

ARTICLE II

TRANSMISSION AND TREATMENT CAPACITY

1. Capacity Assurance Program. Pursuant to the provisions of Columbia's current capacity program and the capacity certification requirements ("Capacity Assurance Program"), the following services for [SSS Owner's] customers must be approved by Columbia prior to [SSS Owner's] authorization to its customer for such service:

- i. All new connections, whether from new or existing customers, to the Satellite Sewer System after the Effective Date ("New Connections"); and
- ii. Proposed additional wastewater flow from a Current Connection ("Additional Flow").

Columbia's approval of New Connections and Additional Flow is subject only to limitations of the Capacity Assurance Program.

2. Treatment Capacity. In determining whether Columbia has adequate treatment capacity to approve New Connections or Additional Flow from the Satellite Sewer System, the Parties agree that Columbia will make such determination in accordance with the Capacity Assurance Program. On a monthly basis, [SSS Owner] will provide Columbia with a list of all New Connections and Additional Flow within the Satellite Sewer System.

3. Collection and Transmission Capacity. In determining whether Columbia has adequate collection and transmission capacity to approve New Connections or Additional Flow from the Satellite Sewer System, the Parties agree that Columbia will make such determination in accordance with the Capacity Assurance Program. If Columbia is unable to approve a New Connection or Additional Flow because of inadequate transmission capacity under the Capacity Assurance Program, Columbia will advise [SSS Owner] of system upgrades needed to satisfy capacity requirements.

ARTICLE III

MANAGEMENT, OPERATION AND MAINTENANCE

1. Operation and Maintenance of the Columbia Sewer System. Columbia shall be solely responsible for all operating and maintenance obligations for the Columbia Sewer System and for compliance with the City Permit. Columbia shall be solely responsible for all capital improvements to the Columbia Sewer System.

2. Operation and Maintenance of the Satellite Sewer System. [SSS Owner] shall be solely responsible for all operating and maintenance obligations for the Satellite Sewer System and for compliance with any permits issued by DHEC for the operation of the Satellite Sewer System. [SSS Owner] shall be solely responsible for all capital improvements to the Satellite Sewer System.

3. Fats, Oils, and Grease Program (“FOG Program”). Within 180 days of the Effective Date of this Agreement, [SSS Owner] shall develop and implement a FOG Program establishing uniform registration, operating, maintenance, cleaning, and inspection requirements designed to limit and control the discharge of fats, oils, and grease from Food Service Establishments (FSEs) into the Satellite Sewer System. The FOG Program shall be developed as follows:

- i. [SSS Owner] shall develop a FOG Program and submit to Columbia for approval; or
- ii. ***[ADDITIONAL OPTION FOR GOVERNMENTAL ENTITIES]*** [SSS Owner] may adopt Columbia’s FOG Program, including the promulgation of a regulation comparable to Parts 29 and 30 of Columbia’s Engineering Regulations.

[APPLICABLE TO GOVERNMENTAL ENTITIES ONLY] [SSS Owner] will enact all ordinances necessary to implement and enforce the FOG Program developed pursuant to this Paragraph.

Columbia may audit the [SSS Owner] FOG Program as it deems necessary to ensure full implementation and enforcement of the FOG Program, including, but not limited to, regular periodic inspections of all FSEs and enforcement action for violations of the [SSS Owner] FOG Program requirements. [SSS Owner] shall submit to Columbia on a semi-annual basis a report which provides information on implementation and enforcement of the [SSS Owner] FOG Program, including the number of inspections, ***citations [if governmental entity]***, and new FSEs.

4. Infiltration and Inflow Control Program. [SSS Owner] shall manage, operate and maintain the Satellite Sewer System so as to minimize peak flows into the Columbia Sewer System by excluding, to the maximum reasonable extent, the infiltration and inflow of surface and ground water and other extraneous flows into the Satellite Sewer System. Within 180 days of the Effective Date, [SSS Owner] shall engage a third-party consultant to develop and submit for Columbia’s approval the operating procedures that will be undertaken during the term of this Agreement to control, to the maximum reasonable extent, the infiltration and inflow of

extraneous flows into the Satellite Sewer System (“I/I Control Program”). Upon Columbia’s approval, [SSS Owner] will implement the I/I Control Program and will provide Columbia with an annual report on the actions taken by [SSS Owner] to implement the I/I Control Program. Failure to implement the approved I/I Control Program shall be grounds for termination of this Agreement pursuant to Paragraph 5 of Article VI below.

5. Peak Flow Limitations. Where Columbia reasonably determines that flows originating or transmitted through the Satellite Sewer System to the Columbia Sewer System are or can reasonably be expected to cause or contribute to (1) a sanitary sewer overflow in the Columbia Sewer System, (2) a condition resulting in flows exceeding the pumping capacity of a Columbia Sewer System pump station, and/or (3) a violation of the City Permit, Columbia may impose peak flow limitations upon the Satellite Sewer System as Columbia determines are reasonably necessary to avoid such condition.

6. DHEC Permits. The Parties acknowledge and agree that this Agreement does not impute to Columbia the responsibility for enforcement of any DHEC permit issued to [SSS Owner] or for management and oversight of the Satellite Sewer System, and by entering into this Agreement, Columbia assumes no liability for [SSS Owner’s] failure to operate and maintain the Satellite Sewer System in compliance with any permit issued to [SSS Owner] by DHEC or any other governmental authority for operation of the Satellite Sewer System.

ARTICLE IV

FLOW METERING

1. Flow Meters. Columbia shall be solely responsible for the installation, operation, and maintenance of flow meters required under this agreement.

2. Calibration. At least once per calendar year, the metering stations as provided for in Paragraph 1 of this Article shall be calibrated both hydraulically and electronically by a qualified third-party entity engaged by Columbia. Calibration of the metering stations shall be at the sole expense of Columbia.

3. Reporting. Columbia agrees to make available all flow metering data to [SSS Owner] within thirty (30) calendar days of [SSS Owner’s] request.

ARTICLE V *[IF GOVERNMENTAL ENTITY]*

PRETREATMENT PROGRAM

1. Sewer Use Ordinance. [SSS Owner] will adopt a local sewer use ordinance which is no less stringent and is as broad in scope of the sewer use ordinance adopted by Columbia and codified at Chapter 23 of the Columbia Code of Ordinances (“Columbia Ordinance”). [SSS Owner] will forward to Columbia for review a draft of its proposed sewer use

ordinance within sixty [60] days of the date of this Agreement. [SSS Owner] will adopt its sewer use ordinance within ninety (90) days of receiving approval from Columbia of its content.

2. Ordinance Amendments. Whenever Columbia amends the Columbia Ordinance, it will forward a copy of the revisions to [SSS Owner]. [SSS Owner] will adopt revisions to its sewer use ordinance that are at least as stringent as those adopted by Columbia. [SSS Owner] will forward to Columbia for review its proposed revisions within ninety (90) days of receipt of the Columbia's amendments. [SSS Owner] will adopt its proposed amendments within ninety (90) days of receiving approval from Columbia of the content thereof.

3. Local Limits. [SSS Owner] has enacted pollutant specific local limits which address at least the same pollutant parameters and are at least as stringent as the local limits enacted by Columbia. If Columbia makes any revisions or additions to its local limits, Columbia will forward to [SSS Owner] a copy of such revisions or additions within thirty (30) days of enactment thereof. Within ninety (90) days of receipt thereof, [SSS Owner] will adopt any such revisions or additions to its local limits to ensure that such limits address at least the same pollutant parameters and are at least as stringent as the revised or additional local limits enacted by Columbia.

4. Enforcement of the [SSS Owner] Ordinance. Any new Industrial User must have a permit from Columbia prior to discharge of any industrial wastewater into the Satellite Sewer System. [SSS Owner] designates Columbia as the agent of [SSS Owner] for the purposes of implementation and enforcement of the [SSS Owner] Ordinance against Industrial Users located in the Satellite Sewer System. Columbia may take any action under the [SSS Owner] Ordinance that could have been taken by [SSS Owner], including the enforcement of the [SSS Owner] Ordinance in courts of law. Columbia, on behalf of and as agent for [SSS Owner], will perform technical and administrative duties necessary to implement and enforce the [SSS Owner] Ordinance against Industrial Users. Columbia will: (1) update the industrial waste survey; (2) issue permits to all Industrial Users required to obtain a permit; (3) conduct inspections, sampling, and analysis of Industrial Users; (4) take all appropriate enforcement action as outlined in Columbia's enforcement response plan and provided for in the [SSS Owner] Ordinance; and (5) perform any other technical or administrative duties the Parties deem appropriate. In addition, Columbia may, as agent of [SSS Owner], take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.

5. Industrial Users Outside of [SSS Owner] Jurisdiction. Before an Industrial User located outside the jurisdictional boundaries of [SSS Owner] is approved to discharge into the Satellite Sewer System, [SSS Owner] and Columbia will enter into an agreement with the jurisdiction in which such Industrial User is located. Such agreement will be substantially equivalent to this Agreement and must be entered into prior to a discharge from any such Industrial User.

6. Reimbursement to Columbia. [SSS Owner] will reimburse the Columbia for all costs incurred in implementing and enforcing the [SSS Owner] Ordinance pursuant to Paragraph

4 of this Article. Columbia shall directly bill Industrial Users discharging to the Satellite Sewer System for the costs of accepting for transmission and treatment the industrial wastewater.

6. Challenges to Columbia's Legal Authority. If the authority of Columbia to act as agent for [SSS Owner] pursuant to Paragraph 4 of this Article is questioned by an Industrial User, court of law, or otherwise, [SSS Owner] will take whatever action is necessary to ensure the implementation and enforcement of the [SSS Owner] Ordinance against its Industrial Users, including, but not limited to, implementing and enforcing [SSS Owner] Ordinance on its own behalf and/or amending this Agreement to clarify Columbia's authority under Paragraph 4 of this Article.

ARTICLE V [IF PRIVATE ENTITY]

PRETREATMENT

1. Industrial Users within Satellite Sewer System. Any Industrial User (as defined by S.C. Regulation 61-9.403.3) within the service area boundaries of [SSS Owner] must have a permit from Columbia prior to discharge of any industrial wastewater into the Satellite Sewer System. Before an Industrial User located within the service area boundaries of [SSS Owner] is approved to discharge into the Satellite Sewer System, the Industrial User will submit to Columbia an application for a permit to discharge industrial wastewater in accordance with the Columbia Ordinance. As a condition of the permit, Columbia and the Industrial User must enter into a contract pursuant to which the Industrial User subjects itself to any enforcement action available to Columbia under the Columbia Ordinance and the Industrial User accepts the jurisdiction of the South Carolina Court of Common Pleas for the purposes of enforcing the Columbia Ordinance and agrees to comply with any order of that court to comply with the contract or pay penalties for the violation thereof.

ARTICLE VI

TERM, MODIFICATION, AND TERMINATION

1. Term. This Agreement shall be effective as of the Effective Date and shall continue in full force and effect for a period of XX (XX) years unless sooner terminated pursuant to Paragraph 5 of this Article (the "Term").

2. Modification. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing and executed by the Parties. The failure of either Party to enforce any of the provisions of this Agreement or the waiver therefore, in any instance, shall not be construed as a general waiver or relinquishment of its part of any such provision but the same shall, nevertheless, be and remain in force and effect.

3. Periodic Review. The Parties will review and modify this Agreement to ensure compliance with the Federal Clean Water Act (42 U.S.C. §1251 et seq.) and rules and regulations (*see* 40 CFR Part 403) issued thereunder, as necessary, but at least once every [XX] years on a date to be determined by the Parties.

4. Default and Remedies. The following is an “event of default” under this Agreement: Failure by the Columbia or **[SSS Owner]**, respectively, to perform any of the material terms, conditions, or obligations of Columbia or **[SSS Owner]**, respectively, hereunder, which failure shall continue for a period of thirty (30) days after written notice from the Columbia or **[SSS Owner]**, as appropriate, specifying such failure and requesting that it be remedied.

Whenever an event of default has occurred, the Parties shall have the right to take either or both of the following remedial actions:

- (a) Terminate the Agreement pursuant to Paragraph 5 or 6 hereunder;
- (b) Take whatever action at law or in equity that may appear necessary or desirable to collect the other amounts due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the other party under this Agreement.

In addition to the remedies provided in (a) and (b) hereunder, **[SSS Owner’s]** failure to comply with Articles III and V of this Agreement shall be a violation of the permit issued to **[SSS Owner]** pursuant to Article I of this Agreement, and Columbia may also impose civil penalties not to exceed \$2,000 per day for each such violation.

No remedy conferred on or reserved to Columbia or **[SSS Owner]** under this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and is in addition to every other lawful remedy now or hereafter existing. No delay or omission to exercise any right or power accruing on any continuing event of default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

5. Termination of Agreement. In the event that conditions constituting breach(es) of Articles III and V of this Agreement continue without cure being timely made as provided pursuant to Paragraph 4 of this Article, Columbia may:

- (a) Request that **[SSS Owner]** submit a corrective action plan requiring compliance with this Agreement in an expeditious manner which, if approved by Columbia, is deemed to be a condition of the permit issued pursuant to Article I of this Agreement;
- (b) Provide written notice to **[SSS Owner]** providing for phasing out the terms of this Agreement within two (2) years after the date of the initial notice of breach provided.
- (c) Columbia may terminate this Agreement by providing thirty (30) days written notice to **[SSS Owner]**. Except for remedies allowed under Paragraph 4 of this Article, all benefits and obligations under this

Agreement will cease following thirty (30) days from receipt of such notice.

6. [SSS Owner] may terminate this Agreement upon one hundred eighty (180) days notice to Columbia pursuant to the notice provisions in Article VII.

ARTICLE VII

MISCELLANEOUS

1. Entire Agreement. This Agreement constitutes the complete and final expression of the agreement of the Parties relating Columbia's transmission, treatment, and discharge of wastewater from the Satellite Sewer System and supersedes all other agreements, whether verbal or written, between Columbia and [SSS Owner] related in any manner to the obligations of the Parties under this Agreement.

2. Binding Effect. This Agreement shall be binding upon and insure to the benefit of the Parties, their successors and assigns.

3. Severability. The Parties agree that the various provisions of this Agreement are severable and that, if any single clause or any portion thereof by found invalid, illegal, or unenforceable by a court of competent jurisdiction, only that part will be severed from this Agreement, and the remaining provisions shall continue in force in accordance with the tenor of this Agreement.

4. Counterparts and Facsimiles. This Agreement may be executed in as many counterparts as may be required, and facsimile or electronic PDF copies of signatures shall be an effective and binding indication of a Party's commitment to and acceptance of the terms hereof.

5. Choice of Law. This Agreement shall be construed under the laws of the State of South Carolina.

6. Headings. The headings used in this Agreement are for convenience only and do not impart any substantive significance in the interpretation of this Agreement.

7. Notices. Any and all notices required or permitted hereunder shall be in writing and shall be deemed to be given when hand-delivered, sent by Federal Express, or upon receipt after mailing when mailed by certified mail return receipt requested, postage prepaid, addressed to the party for whom it is intended, as follows:

If to the City of Columbia:

[insert name and address]

With a copy to:

[insert name and address]

If to the **[SSS Owner]**:

[insert name and address]

With a copy to:

[insert name and address]

IN WITNESS WHEREOF, the Parties hereto each of who being duly authorized have set their hands and seals to be effective on the Effective Date.

THE CITY OF COLUMBIA

Witness _____

By: _____

Witness _____

Date: _____

[SSS OWNER]

Witness _____

By: _____

Witness _____

Date: _____