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Attorneys for Board of County Commissioners
of Hamilton County, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record through the Court's CM/ECF system on this 26th day of July, 2017.

/s/ Aaron M. Herzig

MSD Operation Transition and Cooperation Agreement Commitment Letter

July 26, 2017

Hon. Michael R. Barrett
U.S. District Judge
Potter Stewart U.S. Courthouse
100 East 5th Street, Room 239
Cincinnati, OH 45202

Re: MSD Operation Transition and Cooperation Agreement between Hamilton County Commissioners and City of Cincinnati in *United States, et al. v. Bd. of County Comm'rs of Hamilton County and City of Cincinnati*, Case No. 1:02-cv-00107-MRB-KLL ("MSD Case")

Dear Judge Barrett:

This commitment letter ("Commitment Letter") states the terms whereby the Board of Commissioners of Hamilton County ("BOCC") and the City of Cincinnati ("City") (collectively, the BOCC and City are the "parties"), agree to resolve certain disputes between them. Upon due authorization by each party, this Commitment Letter shall, upon the voted approval of both BOCC and City, be binding upon the parties and then memorialized in a MSD Operation Transition and Cooperation Agreement ("Agreement"), whose drafting and implementation will be subject to the Court's continued mediation if needed, and then the Court's approval and Order taking continuing jurisdiction over, and enforcement of, the Agreement. The effective date of the Agreement shall be the date of entry of that Court Order ("Effective Date").

This Commitment Letter is the result of an extensive mediation led by this Court under a Protective Order. The parties greatly appreciate the Court's leadership and good judgment throughout the mediation. The parties hereby request that the Court terminate the Protective Order so that they may engage in public discussion of this Commitment Letter.

The parties agree as follows:

1. Transfer of Operations.

The 1968 Operating Agreement shall be terminated and replaced by the Agreement that shall transfer all of the operations of the Ohio Revised Code ("ORC") Chapter 6117 County Sewer District known as the Metropolitan Sewer District of Greater Cincinnati or MSD ("Sewer District") from the City to the BOCC, subject to the terms below.

There shall be a MSD Citizens Board ("Citizens Board"), which shall have the power, authority, and duty (a) to oversee the Director of the Sewer District and daily operations of the Sewer District, (b) the specific supermajority approvals identified in Section 2 and Section 3 below and, (c) to report to the BOCC regarding the performance of the Sewer District Director and Sewer District. The Citizens Board will oversee the Director and daily operations of the District by simple majority vote. All power, authority, or duties not assigned to the Citizens Board as identified above shall remain with the BOCC (e.g., legislation, rules, policies, budgets, rates,

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debt, and legal matters) under ORC 6117. As a result of the Citizen Board's power regarding the hiring and firing of the Sewer District Director, and the ability of the appointing party to terminate a member without cause, a state law change may be required prior to the Effective Date and thus is a condition precedent to the Agreement and Order.

The Citizens Board shall have 5 citizen members, 3 appointed by BOCC and 2 by City. Each member shall serve at the pleasure of their appointing party and members may be dismissed and replaced at any time and for any reason at the will of the appointing party without cause or redress. Members will serve staggered 3 year terms with 2 members (one from BOCC, one from City) having initial 2 year terms and the balance 3 year terms. Citizen Board members will serve as County employees, and thus be subject to Ohio ethics and other laws, with an initial salary of \$12,000/year, uniformly adjustable by the BOCC. The BOCC shall appoint each new Sewer District Director as recommended by a supermajority of the Citizens Board (4 votes). The BOCC may fire a Sewer District Director for cause. The Citizens Board may fire a Sewer District Director upon a supermajority vote. The Sewer District Director shall appoint a Deputy Director with the approval of a supermajority of the Citizens Board, who shall serve as Interim Director during any period when the position of Sewer District Director is vacant. All Sewer District employees shall be directed by and report to the Director, who shall have the delegated power to hire and fire Sewer District employees (subject to collective bargaining agreements and applicable law). The Citizens Board shall control Sewer District procurement, subject to state law and the policies and legislation of the BOCC.

2. Protection of Workforce and Pensions.

All present and future Sewer District employees shall be County BOCC employees and shall be Members of the Cincinnati Retirement System ("CRS") for their pensions (unless the employee is already in the Ohio Public Employee Retirement System ("OPERS")). This arrangement will require a state law change prior to the Effective Date and thus is a condition precedent to the Agreement and Order. The City is a party to the Collaborative Settlement Agreement and Consent Decree (entered by the Court on 10/5/15) ("Pension Decree"). The County is not a party to the Pension Decree. The BOCC shall pay into CRS the employer share of pension contributions for Sewer District employees as determined by the Pension Decree or subsequent means by which the City's employer contribution is determined. Because the BOCC will become the employer of Sewer District employees the City shall notify and consult with the BOCC prior to agreeing to any change in the CRS employer's share applicable to Sewer District personnel or any change in the benefits to current or future Sewer District retirees. Additionally, the County reserves the right, at its sole discretion, to seek to become an intervening defendant in the Pension Decree, which the City shall not oppose, for the purposes of participating in any potential change in the CRS employer's share applicable to Sewer District personnel or any change in benefits to current or future Sewer District retirees. The parties recognize that the eventual transition of all employee pensions from CRS to OPERS may one day be desirable and in the common public interest, understand this is not possible at present, but agree to collaboratively reevaluate and consider such a transition at least once every 5 years. AFSCME and CODE will be recognized by the BOCC as the exclusive bargaining representatives of their existing units at the Sewer District, the BOCC will consent to and support certification of CODE

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and AFSCME as the exclusive representatives of said units if requested, and the BOCC will enter into collective bargaining agreements with AFSCME and CODE on the same material terms as their existing agreements with the City. The Sewer District job functions listed on attached Exhibit 1 (without any minimum or maximum number of employees) cannot be shifted to non-Sewer District employees (private or public) without approval by a supermajority of the Citizens Board. The Sewer District has made significant investment in its facilities at the Gest Street campus, which will remain the main location for employees engaged in Sewer District operations.

The City and County are committed to promoting the economic success of all people and have established policies to promote and protect diversity and inclusion in their hiring and contracting practices. The Sewer District shall not discriminate against any Sewer District employee or contractor based on race, gender, age, color, religion, disability status, marital status, sexual orientation or transgender status, or ethnic, national, or Appalachian regional origin. The Sewer District shall comply with all applicable laws regarding contracting, including those designed to address discrimination against women, minorities, disadvantaged citizens, and small businesses.

3. Odor-Related Matters.

In connection with the mediation, the BOCC and City agreed to implement a number of odor control projects, as listed in Exhibit 2, and agree to take future action as necessary to plan, design and construct them. To further address odor matters, a supermajority approval of the Citizens Board is required for future Sewer District projects or actions which would result in the construction of new Sewer District wastewater treatment plants ("Plants") or materially increase the volume, or materially alter the types, of waste feedstocks transported into ("Material Change") the Sewer District's Plants and thus potentially increase odors. However, changes to the volume or content of wastewater (including separate and combined sewer flows) conveyed through MSD's sewage collection system and its treatment at the Plants shall not constitute a Material Change. Approval by the Citizens Board shall not be unreasonably withheld. However, if emergency or other temporary exigent circumstance (e.g., if one Plant needs to transport and treat more waste because another is offline), Sewer District may make a Material Change to one or more Plants for a period not to exceed 120 days (which period may be extended upon approval by a supermajority of the Citizens Board, which shall not be unreasonably withheld). The foregoing notwithstanding, none of the requirements or restrictions of this Section shall apply if Sewer District is mandated to take an action by federal or state laws or regulations.

4. Assets and Bond Obligations.

BOCC and City disagree regarding their respective rights in certain assets ("Assets") of the Sewer District ("Dispute"). The following shall apply during the Agreement:

- A. The BOCC shall have the right to use all Assets which are or may be subject to the Dispute; and

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- B. The City shall not sell, transfer, lease, separate, or otherwise dispose of or encumber the Assets or any part thereof that would impair Sewer District bonds or other obligations payable from Sewer District revenues.

The parties otherwise reserve and do not waive their existing claims, defenses, and positions regarding the Assets.

5. City will be removed as a Co-Defendant.

City shall be removed as a defendant, and shall not remain or act to become a party, to the MSD Case, except as necessary to enforce the Agreement. Court approval is required under the terms of the Consent Decrees in the MSD Case, and thus this is a condition precedent to the Agreement and Order.

6. A smooth transition will occur.

BOCC and City shall work collaboratively and expeditiously to prepare the Agreement and other necessary documents within 45 days of the approval of this Commitment Letter by their respective governments. Each party shall delegate authority to execute the Agreement in its official action approving this Commitment Letter. The Agreement is intended to memorialize the terms of this Commitment Letter, but shall provide necessary additional detail in order to ensure the terms of the Commitment Letter are fully implemented. BOCC and City, respectively, shall select the Citizens Board within 30 days after the Effective Date. The Citizens Board shall work expeditiously to provide the recommended candidate for Sewer District Director to the BOCC within 120 days after the Effective Date. Planning for the transition of Sewer District operation from the City to BOCC shall begin on the date of this Commitment Letter. The parties agree that their respective administrations shall work expeditiously, cooperatively, and in good faith to implement this Commitment Letter and then the Agreement. City agrees to fully and expeditiously cooperate and assist BOCC and its administration in the transition and implementation of the Agreement and BOCC's implementation of the MSD Case Consent Decrees. For example, the transition is anticipated to require a shared services agreement, whereby City will provide administrative services to Sewer District for a temporary period of time after the Agreement, which shared services agreement shall be subject to the Agreement and executed at or before the Effective Date. The transition will plan for, and the parties will execute in an orderly manner, all necessary assignments/transfers of contracts, transition and transfer of finances, systems, data, personnel and other matters, and cooperation in unwinding any contracts that cannot be assigned (e.g., City department-wide gas and electric contract). City shall tender the undertaking, prosecution and defense of all legal matters to BOCC and County on behalf of Sewer District. The City and BOCC will continue to cooperate to promote economic development throughout the community. The Sewer District shall not unreasonably withhold cooperation related to development projects. The Commitment Letter, upon approval by the parties, and the Agreement upon approval by the parties and issuance of the Order, shall be subject to the continuing jurisdiction of the Court and applicable law, and each may be modified only by written agreement of the parties. The parties shall not take any actions inconsistent with or contrary to the terms of this Commitment Letter. If the Effective Date of the Agreement is not on or before April 30, 2018, the parties agree to a short term extension of the 1968 Operating

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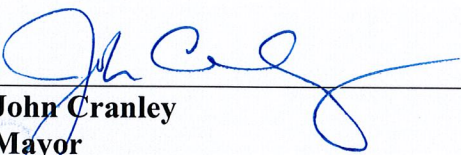
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Agreement, effective through passage of this Commitment Letter by both parties, to the earlier of the Effective Date or September 30, 2018, at which time the 1968 Operating Agreement shall terminate. If any condition precedent listed in this Commitment Letter is not met or expected to be met by April 30, 2018, then the parties shall resume Court mediation, or seek other remedies.

7. Term.

The term of the Agreement shall be the later of 45 years after the Effective Date or the date of termination of the MSD Case Consent Decree.

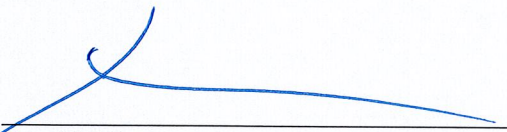
Respectfully,



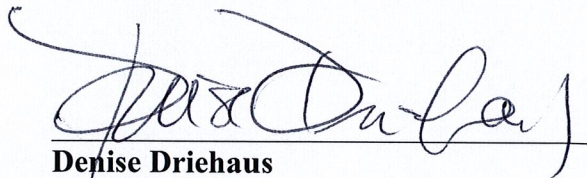
John Cranley
Mayor
City of Cincinnati



Todd Portune
President
Board of Commissioners of Hamilton County



David Mann
Vice Mayor
City of Cincinnati



Denise Drieaus
Vice President
Board of Commissioners of Hamilton County

COMMITMENT LETTER EXHIBIT 1: MSD JOB FUNCTIONS

	Title¹	Bargaining Unit	Class Code
1.	Accounting Technician 2	AFSCME	105
2.	Accounting Technician 3	AFSCME	106
3.	Administrative Specialist	CODE	001
4.	Administrative Technician	CODE	008
5.	Assistant Facilities Maintenance Manager	N/A	541
6.	Assistant Fleet Services Manager	N/A	685
7.	Assistant Supervisor of Customer Service	CODE	039
8.	Assistant Treatment Superintendent	N/A	168
9.	Automotive Mechanic Crew Chief	AFSCME	677
10.	Building and Grounds Maintenance Crew Leader	CODE	867
11.	Chemist	CODE	054
12.	Civil Engineering Technician 1	AFSCME	521
13.	Civil Engineering Technician 2	AFSCME	522
14.	Civil Engineering Technician 3	AFSCME	523
15.	Clerk Typist 3	AFSCME	062
16.	Computer Systems Analyst	CODE	139
17.	Deputy Director	N/A	535
18.	Deputy Sewers Director	N/A	527
19.	Division Manager	N/A	110
20.	Electrical Maintenance Worker 2	AFSCME	614
21.	Electrical Maintenance Worker 3 (General)	AFSCME	611
22.	Employment and Training Supervisor	N/A	983
23.	Engineering Technical Supervisor	CODE	084
24.	Engineering Technician 3	AFSCME	497
25.	Engineering Technician 4	AFSCME	498
26.	Environmental/Safety Specialist	CODE	072
27.	Facility Maintenance Specialist	AFSCME	855
28.	Fleet Services Supervisor	CODE	098
29.	HVAC Specialist	CODE	619
30.	Industrial Investigator	CODE	091
31.	Industrial Waste Inspector	AFSCME	460
32.	Information Technology Assistant Manager	N/A	045
33.	Information Technology Manager	N/A	046
34.	Laboratory Assistant	AFSCME	287
35.	Laboratory Technician 2	AFSCME	289
36.	Laboratory Technician 4	AFSCME	291
37.	Laborer	AFSCME	601
38.	Maintenance Fabrication Apprentice	AFSCME	673
39.	Maintenance Fabrication Specialist	AFSCME	674
40.	Maintenance Fabrication Crew Leader	AFSCME	675

¹ As described in the MSDGC Job Classifications dated 3/29/17 and City of Cincinnati Class Specification Bulletin, to be updated to account for anticipated title and descriptive changes to reflect employee transitions to County employees, and to be made an exhibit to the MSD Operation Transition and Cooperation Agreement or Court Order.

COMMITMENT LETTER EXHIBIT 1: MSD JOB FUNCTIONS

	<u>Title</u>	<u>Bargaining Unit</u>	<u>Class Code</u>
41.	Maintenance Crew Leader	AFSCME	641
42.	Maintenance Machinist	AFSCME	679
43.	Maintenance Machinist Helper	AFSCME	678
44.	Maintenance Machinist Crew Leader	AFSCME	681
45.	Motor Equipment Operator 1	AFSCME	657
46.	Motor Equipment Operator 2	AFSCME	658
47.	Motor Equipment Operator 3	AFSCME	659
48.	Plant Maintenance Specialist	AFSCME	712
49.	Plant Maintenance Worker	AFSCME	701
50.	Plant Operator 2	AFSCME	703
51.	Plant Operator 2 – OH Cert 3	AFSCME	713
52.	Plant Supervisor	CODE	119
53.	Pretreatment Specialist	AFSCME	606
54.	Principal Engineer	N/A	216
55.	Public Works/Utilities Superintendent	N/A	257
56.	Public Works Inspector 2	AFSCME	472
57.	Real Property Specialist	CODE	234
58.	Reproduction Machine Operator 2	AFSCME	877
59.	Senior Accountant	CODE	111
60.	Senior Administrative Specialist	CODE	013
61.	Senior Chemist	CODE	284
62.	Senior Computer Programmer Analyst	CODE	043
63.	Senior Engineer	CODE	273
64.	Senior Engineering Technician	CODE	165
65.	Senior Environmental/Safety Specialist	CODE	130
66.	Senior Plant Supervisor	CODE	180
67.	Senior Real Property Specialist	CODE	235
68.	Sewer Construction Inspector	AFSCME	725
69.	Sewer Maintenance Crew Leader	CODE	805
70.	Sewers Chief Engineer	N/A	544
71.	Sewers Director	N/A	530
72.	Stockhandler	AFSCME	866
73.	Storekeeper	AFSCME	874
74.	Supervising Chemist	N/A	286
75.	Supervising Engineer	N/A	515
76.	Supervising Management Analyst	N/A	041
77.	Supervising Real Property Specialist	N/A	236
78.	Supervising Storekeeper	AFSCME	875
79.	Supervisor of Customer Service	CODE	750
80.	Supervisor of Maintenance	CODE	640
81.	Supervising Accountant	N/A	254
82.	Supervising Environmental/Safety Specialist	N/A	131
83.	Supervising Surveyor	CODE	503
84.	Supervisor of Industrial Waste	CODE	609

COMMITMENT LETTER EXHIBIT 1: MSD JOB FUNCTIONS

	<u>Title</u>	<u>Bargaining Unit</u>	<u>Class Code</u>
85.	Surveyor	CODE	504
86.	Technical Systems Analyst	CODE	044
87.	Treatment Superintendent	N/A	256
88.	Treatment Supervisor	N/A	304
89.	Truck Driver	AFSCME	651
90.	Utility Technician	AFSCME	604
91.	Wastewater Collection Supervisor	CODE	198
92.	Wastewater Collection Crew Leader	AFSCME	721
93.	Wastewater Collection Equipment Specialist	AFSCME	723
94.	Wastewater Collection Inspector	AFSCME	474
95.	Wastewater Collection Pipelayer	AFSCME	784
96.	Wastewater Collection Superintendent	N/A	710
97.	Water Customer Service Representative 2	AFSCME	768
98.	Water Works Dispatcher	AFSCME	757
99.	Water Works Maintenance Field Supervisor	CODE	759
100.	Graphic Designer	CODE	080

COMMITMENT LETTER EXHIBIT 2: MSD ODOR PROJECT UPDATE

MILL CREEK PROJECT	STATUS	NEXT STEPS	CONCURRENCE?	ADDITIONAL FUNDING REQUIRED
Mill Creek Septage Receiving Station	Design underway, to be complete in Q4 2017.	MSD to request construction authorization in late 2017 or 2018 and will be in 2018 CIP.	YES	\$964,600 (Construction)
Influent Headworks	Design underway, to be complete in Q3 2017	MSD to request construction authorization in late 2017 or 2018 and will be in 2018 CIP.	YES	\$1,259,000 (Construction)
Primary Settling & Skimmings	Project deferred by MSD	Design to proceed if modeling is completed and demonstrates that additional equipment is required. Possible 2018 CIP if equipment is required.	YES	\$2,890,400 (Design & Construction)
Polymer Replacement System	Construction legislation approved by BOCC on 4/5/17 for \$6,641,900.	Construction is expected to start in July 2017, currently out to bid.	YES	\$0
Solids Handling Phase 1	MSD & BOCC agreed to remove facility improvements from this project; evaluate scaled-down project after a new solids handling master plan is completed (Aug. 2018). Two approved projects:	Planning for a "consensus" Solids Handling Improvement Plan for Mill Creek to advance through a joint effort after selection of a design firm. After the master plan is completed, then project work will be prioritized and design will be proposed for funding, followed by construction.	YES	\$1,000,000 - \$1,500,000 (Design)(estimated) \$5,000,000 - \$10,000,000 (Construction)(estimated)
	1. Digester Covers and Odor Control project	Design underway. MSD to request construction authorization in late 2017 or 2018 and will be in 2018 CIP.	YES	\$3,500,000 (Construction)
	2. Non-Potable Water project	MSD to request design authorization in 2017 and construction authorization in late 2017 or 2018	YES	\$5,100,000 (Design and Construction)